TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted] 216

R. J. DARNELL, APPELLANT,

vs.

GEORGE R. EDWARDS, F. M. SHEPPARD, AND W. B. WILSON, CONSTITUTING THE MISSISSIPPI RAILROAD COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED AUGUST 14, 1916.

(24,678)

(24,878)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 595.

R. J. DARNELL, APPELLANT,

vs.

GEORGE R. EDWARDS, F. M. SHEPPARD, AND W. B. WILSON, CONSTITUTING THE MISSISSIPPI RAILROAD COMMISSION.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 8, 1915.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

Pleas and proceedings had and done at a regular term of the District Court of the United States for the Southern District of Mississippi, begun and held in the City of Jackson, Mississippi, on the first Monday of November, 1914, that being the regular time and place designated by law for the holding of said court; present and presiding the Hon. H. C. Niles, United States District Judge, Hon. R. C. Lee, U. S. Attorney, Hon. John G. Cashman, U. S. Marshal, Hon. L. B. Moseley, Clerk and E. H. Reber, Court Crier, among the proceedings had and done were the following to-wit:

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF THE STATE OF MISSISSIPPI.

To the Honorable Henry C. Niles, Judge of the United States District Court Aforesaid, Sitting in Equity in and for the Said Division of the Said District in Said State:

The Bill of Complaint of R. J. Darnell, Complainant, against George R. Edwards, F. M. Sheppard and W. B. Wilson, composing and being the Railroad Commission of the State of Mississippi, Defendants.

I.

Complainant respectfully showeth unto your Honor that he is a citizen and resident of the City of Memphis, in the County of Shelby and State of Tennessee, and has been since the 7th day of June A. D. 1913, continuously and before that time and that the defendant, George R. Edwards, is a citizen and resident of the County of Attala in the State of Mississippi, and that the defendant, F. M. Sheppard, is a citizen and resident of the County of Perry in the United State of Misssissippi, and that the defendant, W. B. Wilson, is a citizen and resident of the County of Alcorn in the State of Mississippi, and that the said three (3) defendants compose and are the said Railroad Commissioners for the State of Mississippi, and as such, are vested with the power of fixing reasonable and proper rates to be charged by the different railroad corporations operating in the State of Mississippi, so far as the traffic on the said railroad is intra-state, to-wit: wholly within the State of Mississippi, but that they have no power and authority, as complainant is informed and believes and charges, to arbitrarily and unjustly require of any railroad company, or individual operating a railroad in the State of Mississippi, to fix a tariff, or rate, upon freight in the State of Mississippi which is unreasonable and unjust and which exceeds, or equals, the cost to the railroad company of hand-

ling the freight on its line of railroad, or which will not allow to the said railroad a reasonable and fair profit in its business as a common carrier of freight for hire within said State.

Complainant further avers that he is, and has been for many years prior to the 7th day of June A. D. 1910, the owner of a large tract, or tracts of timber lands lying within the State of Mississippi in the Counties of Panola, Quitman and Tallahatchie; which lands are valuable, mainly, for the merchantable timber which is standing and growing thereon and consisting of about eighteen thousand (18,000) acres, the individual property of your complainant.

Being the owner of the said timber land and desirous of providing himself with a convenient and easy method of reaching the timber market with the said timber, on the said 7th day of June A. D. 1910, your complainant entered into a contract with the Illinois Central Railroad Company, a corporation organized and chartered and incorporated under the laws of the State of Illinois, owning and operating a line of railroad from the City of Chicago, in that State, to the City of New Orleans, in the State of Louisiana, reaching with its line of railroad to the cities of St. Louis, Missouri; Memphis, Tennessee; New Orleans, Louisiana and other large cities along its lines; and running from the City of Memphis, in the State of Tennessee, on its line to New Orleans, Louisiana, through the County of Panola aforesaid, about 12 miles from the said land of the complainant, through the town of Batesville, an incorporated town on the said line of the Illinois Central Railroad in the said County of Panola, by which contract it was agreed between the Illinois Central Railroad Company, (in the said contract called, "the Company"), and your complainant, R. J. Darnell and R. J. Darnell, Incorporated, (who were in the said contract called, "the Party"), that a railroad should be constructed from the said town of Batesville, in said County of Panola, extending in a Southwesterly direction therefrom along such particular route as may be selected by the "Company," the general location of the said railroad track to be in a southwesterly direction, intersecting the Chickasaw Boundary line in or near Section Five, (S. 5) in Township Twenty-seven North (T. 27 N.) of Range Two East

(R. 2 E.), thence southwesterly and southerly over the Yocona River, to a point on the south bank of said river in Tallahatchie County, the purpose being to facilitate the removal of timber from certain lands in Panola, Tallahatchie and Quitman Counties, Mississippi.

The said contract provided for the payment of the expenses of the right of way and construction of the said railroad to be borne, as expressed therein, in part by the said Illinois Central Railroad Company and the said "Party" to the said contract and all of which will be fully and at large appear to your Honor by reference to a copy of the said written contract, which is filed herewith, marked, "Exhibit A," and is prayed to be taken as a part of this bill and treated and considered by the Court the same as if it were copied fully herein, and the original of the said contract will be presented to your Honor on the hearing of this cause for inspection.

Complainant further showeth unto your Honor that the making of the said written contract, referred to as "Exhibit A," to this bill, to-wit: on the 21st day of June A. D. 1911, that said Illinois Central Railroad Company, as party of the first part, and the Batesville & Southwestern Railroad Company, as party of the second part, and your complainant, individually, and R. J. Darnell, Incorporated, aforesaid, entered into a further written agreement, amendatory of said written contract marked, "Exhibit A," with reference to the said railroad, which further written agreement in no wise materially changed the said contract, but which last written agreement is herewith referred to as "Exhibit B" and prayed to be taken as a part of this bill and to be considered by the Court the same as if copied herein and a copy thereof is filed herewith as such exhibit and the original will be introduced herein and exhibited to your Honor.

And complainant further avers that on the 6th day of July A. D. 1912, in furtherance of said written agreement of June 21st, 1910, the Illinois Central Railroad Company, as party of the first part, and the Batesville Southwestern Railroad Company, as party of the second part, and R. J. Darnell, Incorporated, and your complainant individually, as parties of the third part, executed a further written agreement with

reference to the construction and lease of the said line of railroad and amendatory thereof, a copy of which last mentioned contract of July 6th, 1912, is filed herewith, marked "Exhibit C," and prayed to be taken as a part of this bill and to be considered by this Court the same as if copied herein.

In the said last mentioned contract, "Exhibit C," it was provided that, "It was acknowledged that the Batesville Southwestern Railroad Company is the Company which was organized to construct and operate said railroad and the construction of which was provided for in said agreement of June 7th, 1910, and it is expressly understood and agreed by and between the parties hereto that the said bond of fifty thousand ($50,000.00) dollars, provided for in said Article 14, as changed by this agreement, shall inure to the benefit of the Batesville-Southwestern Railroad Company, as well as to the benefit of the Illinois Central Railroad Company. The said contract marked, "Exhibit C" also provided for the cancellation and annullment of the contract marked, "Exhibit B," to this bill, but that nothing therein should affect, in any way the provisions of the contract of June 7th, 1910, save as therein specifically provided.

Your complainant avers that the corporation known as the Batesville-Southwestern Railroad Company, is a corporation chartered and incorporated under the laws of the State of Mississippi, with authority to construct a line of ralroad therein.

The original of the said last mentioned contract, marked, "Exhibit C," complainant will exhibit to your Honor on the hearing of this cause.

Complainant further showeth unto your Honor that while the said "R. J. Darnell, Incorporated," is a corporation organized, chartered and incorporated under the laws of the State of Tennessee and while it is a party to the said several written agreements and leases above set out as "Exhibits A, B and C," to this bill, yet, in truth and in fact, the contract between the Illinois Central Railroad Company and not that the said J. B. Darnell, Incorporated, intended to participate in the benefits of the said contract, or in any manner to carry any of the expenses of the building of the said line of railroad

contemplated, but the complainant was himself, individually, and alone interested in the said contract.

Complainant further avers and charges that under and by virtue of the said three (3) contracts he, complainant, acquired the lease for the term of twenty (20) years, provided for in the said contract, marked, "Exhibit A" to this bill, of the line of the railroad to be constructed from the Town of Batesville, aforesaid, in the southwesterly direction above set out, and that the complainant has erected and built the said line of railroad, complainant paying for such parts of the right of way and building and equipment of the said railroad as is provided in the said contract that he shall pay for and the said Illinois Central Railroad Company, complying with its part of the said contract and there has been by them constructed, from the said Town of Batesville in the southwesterly direction, about seventeen (17) miles of railroad, which has been equipped by the complainant and he has expended in this work, in building and equipping said railroad, out of his own finances, the sum of one hundred and sixty-two thousand, six hundred and sixty-seven dollars ($162,667.67) and sixty-seven cents, and complainant charges that the rest of the expenses of building and equipping the said line of railroad was borne by the said Illinois Central Railroad Company under its said contract, "Exhibit A" to this bill. That neither the Batesville-Southwestern Railroad Company nor the corporation known as the R. J. Darnell, Incorporated, have expended anything in the building or equipping or in the operations of said line of railroad and that your complainant, R. J. Darnell, is the owner and has been since the date of the said first contract, continuously, of the lease of the said line of railroad and alone with the said Illinois Central Railroad Company is interested in the said contract, except such interest as the Batesville-Southwestern Railroad Company may appear to your Honor to have under the said contract.

Complainant showeth unto your Honor that the said line of railroad is now in operation as a common carrier of freight from Batesville to the southwestern terminus of said road at the Yocona River.

Complainant further showeth unto your Honor that he has, under a certain timber contract, which he is advised it is unnecessary to fully set out herein, conveyed to the said corporation known as R. J. Darnell, Incorporated, the right to cut and market timber on his timber lands heretofore mentioned in this bill in the Counties of Panola, Quitman, and Tallahatchie, Mississippi. That a large percentage of the business of the said line of railroad consists in the shipment over it, in connection with the said Illinois Central Railroad, of timber from the lands of the complainant, which timber belongs, under the contracts between him and R. J. Darnell, Incorporated, to the last mentioned corporation and that nearly all of the business of the said railroad, as a common carrier, consists of hauling saw logs to market over its said railroad line from points on its said line to Batesville, or on shipments through Batesville via Illinois Central Railroad. That the outgoing shipments are practically the entire business of the said railroad as it has very little, if any business in the way of carrying commodities over its line from Batesville to the terminus of the said road, or any point thereon. That the revenue of the said road is derived almost exclusively from the outgoing shipments over it of saw logs from points along its lines or adjacent, or accessible thereto, and it has very little other business as a common carrier, except that particular business.

Complainant further showeth unto your Honor that recognizing the truth of the facts heretofore set out, to-wit:

That your complainant is the owner of one hundred and sixty-two thousand, six hundred and sixty-seven dollars ($162,667.67) and sixty-seven cents of his own money in the building and equipment of the said line of railroad and that said R. J. Darnell, Incorporated, has never claimed to own, or owned, any interest in the said line of railroad, nor has ever expended anything thereon. The said last mentioned corporation, to-wit: the said R. J. Darnell, Incorporated, did, at a meeting of its Board of Directors, held at its domicile in the city of Memphis, Tennessee, on the 11th day of August A. D. 1913, pass a resolution authorizing, empowering and directing its President and Secretary, under the seal of the said

corporation, to execute and deliver and transfer to the said R. J. Darnell, individually, the deed of the corporation, conveying to him all of its said rights, title and interest in the said line of railroad and in all of its equipment, cars, engines and rolling stock of any kind and all other property used by the said railroad and its interest in the said several contracts heretofore mentioned as, "Exhibit A, B and C" to this bill and all of which will more fully and at large appear to your Honor by reference to the certified copy of the said minutes of the said meeting of the said Board of Directors which is filed herewith, "Exhibit D" and prayed to be taken as a part of the bill and considered by your Honor as if copied herein.

Complainant further avers that pursuant to the said order of the Board of Directors of the said R. J. Darnell, Incorporated, the said R. J. Darnell, Incorporated, did, through it's President R. J. Darnell and its Secretary, R. J. Wiggs, execute and deliver to your complainant the deed of the said corporation of R. J. Darnell, Incorporated, on the said 11th day of August, A. D. 1913, conveying to the said R. J. Darnell, individually, all of its right, title and interest in and to the said railroad and its equipment, its right of way, road bed, track and buildings, its franchises, rolling stock and privileges that it had in the said line of railroad and all engines and cars of the said railroad and all of the property used by said complainant in the operation of the said line of railroad and also all interest of the said R. J. Darnell, Incorporated, in and to and under said three (3) written agreements, which are mentioned as, "Exhibits A, B and C," to this bill, all of which will more fully and at large appear to your Honor by reference to a copy of the said deed of conveyance, or contract of the said 11th day of August, A. D. 1913, which is filed herewith, marked, "Exhibit E," and prayed to be taken as a part of this bill and considered by your Honor the same as if copied in full herein and the original of which deed of conveyance, or contract, will be exhibited to your Honor on the hearing of this cause.

Complainant, therefore, avers that he is now and has been, since the said contracts were made, the sole individual owner of the said lease of the said railroad line for the said

term of twenty (20) years from the 7th day of June, A. D. 1910, under the said contracts and the said conveyance to him by the said R. J. Darnell, Incorporated. That no other person owns any interest in the said lease and he is, and has been all the time, since it has been constructed, operating the said line of railroad as a common carrier of freight along its line from Batesville to its terminus, about seventeen (17) miles, on the Yocona River.

Complainant avers that diverse citizenship exists between him and the defendants to this suit, to-wit: he is a citizen and resident of the State of Tennessee, as above set out, and all of the defendants are citizens and residents of the State of Mississippi, as above set out.

Complainant further showeth unto your Honor that on the 27th day of April, A. D. 1912, he provided, through his Traffic Manager, of his said railroad, to-wit: Elliott Lang, and promulgated his reasonable tariff on freight as a common carrier, and among other things, on saw logs in car load lots, minimum of (4,500) forty-five hundred feet; that realizing that it costs just as much to haul one kind of log as it did another of the same size, his tariff as promulgated, provided a uniform rate for freight on the transportation of logs in car load lots, minimum forty-five hundred (4,500) feet, regardless of the kind or character of the timber. That under the said tariff, so promulgated, the freight rate on logs of all kinds, car load lots, minimum forty-five hundred (4,500) feet, was as follows:

10 miles and under.....$2.80 per thousand feet.
15 miles and over 10 miles.....$3.35 per thousand feet.
20 miles and over 15 miles.....$3.90 per thousand feet.

Complainant showeth unto your Honor that this was a reasonable and fair rate and as cheap a rate as could be charged for the freight on logs by any railroad and the said tariff rate will be more fully and at large appear to your Honor by reference to the said tariff sheet of the said railroad, copy of which is filed herewith as "Exhibit F," and prayed to be taken as a part of this bill.

Complainant further showeth unto your Honor that notwithstanding the reasonable and fair rates which he has es-

tablished, the tariff or freight rates, on his said road for saw logs, certain citizens interested in the logging business, or claiming to be interested therein, filed with the Mississippi Railroad Commissioners, to-wit: the defendants, a complaint against the said reasonable tariff, charging that the same was extortionate, unjust and confiscatory, so far as its rate on logs was concerned, a copy of which complaint your complainant files herewith as, "Exhibit G," and prays that same will be taken and considered as a part of this bill, the same as if copied herein in full.

Complainant avers and charges that at a meeting of the said Mississippi Railroad Commissioners, to-wit: the defendants, on the 23rd day of July, A. D. 1913, when the said petition came on to be heard, although your complainant, being represented by his Tariff Manager aforesaid, did produce and show to the said defendants that its said rate on logs was not only a just, reasonable and fair rate to be charged, as provided therein and should not be reduced and could not be without making an unreasonable and unjust rate and an unfair and discriminatory rate against this complainant, and without authority of law, on the said 23rd day of July, A. D. 1913, and did sustain the said petition most unjustly and in sustaining the petition did order that your complainant, in the operation of the said Batesville-Southwestern Railroad, as its lessee, should collect on the following freight rates on logs, in car load lots, minimum forty-five (4,500) feet, and that the said rate should apply on the said railroad, to-wit:

OAK, ASH AND HICKORY, CAR LOAD LOTS, MINIMUM 4,500 FEET.

10 miles and under.....$1.50 per thousand feet.
15 miles and over 10 miles.....$1.75 per thousand feet.
20 miles and over 15 miles.....$2.00 per thousand feet.

ON GUM AND ALL OTHER LOGS EXCEPT OAK AND HICKORY.

10 miles and under.....$1.25 per thousand feet.
15 miles and over 10 miles.....$1.50 per thousand feet.
20 miles and over 15 miles.....$1.75 per thousand feet.

The said defendants also, acting as on the said Mississippi Railroad Commissioners, at the said time and place did order, most unjustly and unfairly and without authority of the law, that the said Batesville-Southwestern Railroad, meaning complainant, should repay to such persons that have shipped logs over said railroad, on surrender by such persons or person of original bills of lading showing such payments, the difference between the rate fixed under and by said order of the Mississippi Railroad Commissioners and the tariff, or freight rates, promulgated by the Tariff Manager of your complainant, under tariff of date April 27th, 1912.

All of which unjust order will more fully appear to your Honor by reference to a copy thereof, or a paper which purports to be a copy thereof which was mailed to the Traffic Manager of your complainant and which is filed herewith, marked, "Exhibit H," and prayed to be taken as a part of this bill and considered the same as if were copied herein.

Complainant respectfully showeth unto your Honor that the said rate as fixed by the order of the said Mississippi Railroad Commissioners on the said 23rd day of July, A. D. 1913, is an unfair and unreasonable rate on logs. That the said railroad cannot haul and transport logs for persons on its line of railroad at the said rate because it will cost more for the complainant to haul logs than the amount as allowed by said order to be charged in freight rates.

Complainant avers that the operation of its said road from July 1st, 1912, to June 30th, 1913, inclusive, amounted in expenses as follows, to-wit:

Operating expenses	$ 4,296.20
Rental, based on 1/20 of amount invested	162,667.67
The equivalent of one year	8,133.39
Total operating expenses	12,439.59

That during that time, to-wit: one (1) year, it moved one (1) mile, 245,789 tons at the average cost of moving 1 ton of freight 1 mile, $5.06.

That the cost of hauling 1,000 feet of oak or gum or other logs 13 miles, $3.0613.

That the cost of hauling 1,000 feet of oak or gum or other logs 11 miles is little more than $3.50.

Complainant avers and charges that the costs of its road and equipment was one hundred and sixty-two thousand, six hundred and sixty-seven dollars ($162,667.67) and sixty-seven cents.

That the interest thereon at six (6%) per cent for one (1) year is nine thousand, seven hundred and sixty dollars, ($9,760.06) and six cents.

That its total receipts were the sum of fifteen thousand, five hundred and fifty-three dollars ($15,553.01) and one cent.

That its operating expenses were twelve thousand, four hundred and twenty-nine dollars $12,429.59) and fifty-nine cents, leaving the sum of three thousand, one hundred and twenty-three dollars ($3,123.42) and forty-two cents as its net profit, which, instead of giving complainant six (6%) per cent on his investment, only gives him a return on his investment of 1.92% and thus it will appear to your Honor that under the tariff promulgated by your complainant, and which was so ruthless, unjustly and arbitrarily, unreasonably and unfairly reduced by the action of the said defendants, the complainant was only enabled, in the first year of the operation of his railroad to realize 1.92% on his investment.

Complainant further showeth unto your Honor that he is advised that he is entitled to have a tariff rate on his line of railroad which will enable him, not only to pay the expenses of handling the freight which he carries on his road as a common carrier, but to receive a reasonable return on his investment of not less than the legal rate of interest and yet, it will appear to the Court, from the comparison just shown and complainant alleges that it is true, that under the tariff which is arbitrarily ordered by the defendants to put in force for the hauling of logs, complainant will have to haul logs of all persons offering, at a rate which will not pay the expenses of handling them.

Complainant avers that the said tariff it is ordered to put in force by the said defendants, is not only unjust and unreasonable, but discriminatory against the complainant in the operation of his said road as will appear by comparison with

the tariff of other roads on logs. Complainant shows to the court comparative statement of rates on logs on other roads in their promulgated tariff, which is approved by the defendants, the Mississippi Railroad Commissioners and makes the said comparative tariff statement, "Exhibit I," to this bill and prays that the same may be taken and considered as a part of this bill the same as if it were copied herein in full. And, from this statement, your Honor will perceive that the rate at which it is required by the said defendants to transport logs for all persons on the said line of railroad, is greatly less than that on any other line of railroad operating in the State of Mississippi and complainant, therefore, charges an unjust discrimination in the said order of the said Mississippi Railroad Commissioners against him as the lessee of the Batesville-Southwestern Railroad.

Complainant avers that the said defendants are the duly elected, qualified and acting Railroad Commissioners of the State of Mississippi, provided for under Chapter 139 of the Annotated Code of Mississippi of 1906 for the supervision of common carriers and that the order which they made, above set out, and of which your complainant complains in this bill, was made by them in regular session at Jackson, Mississippi, and that under said Chapter, the defendants claim that the complainant is subject to penalty, fines and other punishment on failure to comply with the order made as aforesaid and are threatening him, complainant, with such penalties, fines and punishment unless he shall put into effect and force the tariff so provided for by the defendants, the said Railroad Commissioners. That to do this is to operate his railroad at a loss and he cannot afford to transport the logs offered to him for transportation at the price fixed by the said Railroad Commissioners, defendants, and cannot do this without actual loss to himself, which he is advised and charges, the law to be that the defendants have no right to require of him.

Complainant charges that the said rate attempted to be put in force by the said defendants, the said Railroad Commissioners, is unjust and unreasonable, unfair and discriminatory against this complainant and in favor of all other railroads in the State of Mississippi.

Complainant also charges that the said rate is less than the actual cost of hauling and handling the logs and that the same was fixed arbitrarily by the said Railroad Commissioners, without any authority of law and is void and in violation of the rights of your complainant.

Complainant charges that the Commissioners, defendants in this cause, have no legal right, as he is advised and charges, to control and regulate the rates charged by him for any kind of freight on his said line of railroad, of which he is lessee, for the further reason that he, an individual, a citizen of the State of Tennessee, is himself solely leasing and operating the said line of railroad and is not operating as a corporation or association. That he has legal right to lease and operate the said line of railroad, as he is advised, believes and charges as such lessee, under the leases which he has filed herewith as exhibits to this bill and he is advised and charges that the law is that the attempt of the said Railroad Commissioners, defendants, to arbitrarily impose upon him any tariff rate which is not acceptable to him, is unlawful and without any warrant or authority of law and that he cannot legally be held to any compliance therewith.

Complainant is advised that the law is and so charges that he is a citizen and resident of the State of Tennessee, operating and leasing a line of railroad in the State of Mississippi, has a right to come into this Honorable Court of Equity as against these defendants, who are citizens and residents of the State of Mississippi, and have them enjoined from enforcing the rate which they have required of this complainant, or compelling him to do so. He has no remedy in a Court of Law and no other remedy except in a Court of Equity against this unreasonable, unjust and most outrageous wrong which the said defendants, the said Railroad Commissioners, have done him, or attempted to do him. That their action in doing so will deprive him of his property without due process of law, in violation of the Constitution of Mississippi.

Section 14, which reads as follows:

"No person shall be deprived of life, liberty or property, except by due process of the law."

Complainant charges that under Section 2 of Article 4 of the Constitution, which provides as follows, in paragraph 1: "The citizens of each State shall be entitled to all privileges and immunities in the several States," that under this provision of the Constitution, complainant, as a citizen of the State of Tennessee, is entitled to right to own land in the State of Mississippi, to lease a railroad in the State of Mississippi and operate the same himself for his own individual profit and that the said defendants, as Railroad Commissioners, have no legal right, as complainant is informed, advised, believes and charges, to in any manner interfere with him, or if mistaken is this, on like advice, avers and charges that the said defendants, as such Railroad Commissioners, have no right to arbitrarily require of him, as a common carrier and lessee of said railroad, to transport logs at an unjust and unreasonable rate of freight thereon, which, he avers is done by the said order of the said defendants, as Railroad Commissioners, as above complained of and which will have the effect, if put in force and required of him, of compelling him to transport logs at an unjust, unfair, discriminatory and unreasonable rate, not sufficient to pay the actual expenses of handling the said logs on his said trains and not sufficient to enable to do what is required without an actual financial loss to himself.

Complainant further, on information, advice and belief, charges that the said act of the said defendants, as Railroad Commissioners, infringes on the rights of the said complainant and is violative of the provisions of Section 1 of the Fourteenth (14th) Amendment to the Constitution of the United States, which reads as follows:

(a) "No state shall make nor enforce any law which shall abridge the privileges or immunities of any citizen of the United States; nor shall any state deprive any citizen of life, liberty, or property without due process of law; nor deny to any person without its jurisdiction, the equal protection of the law."

Complainant charges that the action of the said Railroad Commissioners, defendants, in thus interfering with the tariff promulgated and put in force by the complainant and in fix-

ing an arbitrary, unjust and unreasonable tariff on logs hauled on the said railroad and requiring of the complainant that he adopt the same, is in violation with his rights under the clause of the Constitution of the United States above quoted.

PRAYER.

The premises considered, complainant prays that the said George R. Edwards, F. M. Sheppard and W. B. Wilson be made defendants to this bill and required to answer the same, but not on oath, their oath thereto being hereby expressly waived.

That a writ of injunction be issued by order of your Honor directed to the defendants and each of them, enjoining and restraining them, their agents, attorneys and all others under their authority, from interfering with the tariff or charges of the complainant on logs on its said line of railroad known as the "Batesville-Southwestern Railroad," or with the operation, control or income of the said railroad on any part thereof under or by virtue of said Chapter 139 of the Mississippi Code of 1906 and command that they and each of them do absolutely desist and refrain from issuing, promulgating and enforcing any revision of complainant's tariff or from instituting or aiding any prosecution of suits for recoveries of penalties under said law as to your complainant, of its railroad or employees.

That upon final hearing of this cause, complainant prays that the said injunction may be perpetual.

Or, if mistaken in the relief for herein, then your complainant prays for all such other, further or general relief as the nature of this cause demands, or to equity seemeth mete.

Complainant prays for process against each and all of the said defendants according to law, and is in duty bound, he will ever pray, etc.

MONTGOMERY & MONTGOMERY,

Solicitors for Complainant.

State of Mississippi,
County of Panola.

Before me, Lomax B. Lamb, a Notary Public, in the town of Batesville of said County and State, this day personally appeared R. J. Darnell, complainant in the foregoing bill of complaint, and made oath that all the matters and things in the foregoing bill contained and stated as true, are true as stated and all such matters as are stated on advice, information or belief, he verily believes to be true.

R. J. DARNELL.

Sworn to and subscribed before me, as witness my hand and official seal, this the 13th day of August, A. D. 1913.

LOMAX B. LAMB,
(SEAL) Notary Public.

My commission expires February 21, 1916.

The following appears on the back:

No. 9, R. J. Darnell vs. O. B. Geo. R. Edwards, F. M. Sheppard and Miss. R. R. Coms. U. S. Court, So. Dist. of Miss. Filed Sept. 19th, 1913, L. B. Moseley, Clerk. Montgomery & Montgomery, Attys. at Law, Tunica, Mississippi.

This agreement, made and entered into this seventh day of June, A. D. 1910, by and between the Illinois Central Railroad Company, party of the first part, hereinafter called the Company, and R. J. Darnell, Inc., a corporation of Memphis, Tennessee, and R. J. Darnell, individually, a resident of Memphis, Tennessee, parties of the second part hereinafter for convenience designated and referred to as the Party, witnesseth:

Whereas, the Party desires that a railroad track be constructed from a point on the railroad of the Company at or near Batesville, in Panola County, Mississippi, extending southwesterly therefrom along such particular route as may be selected by the Company, the general location of said railroad track, however, to be in a southwesterly direction intersecting the Chickasaw Boundary Line in or near Section Five

(5) Township Twenty-seven (27) North, Range two (2) East, thence southwesterly and southerly over the Yocona River to a point on the south bank of said river, in Tallahatchie County, the purpose for which the Party desires said track to be constructed being to facilitate the removal of timber from certain lands in Panola, Tallahatchie and Quitman Counties, Mississippi.

Now therefore, it is mutually agreed as follows:

1. The Party agrees after the Company has selected the route for the proposed railroad, to furnish free of cost to the Company, a strip of land for the construction of said railroad not less than one hundred (100) feet in width, fifty (50) feet each side of the center line thereof, and such additional land as may be necessary for station grounds and other necessary purposes, and to convey the same to the Company or such person or corporation as it may designate, by a good and sufficient warranty deed, conveying a good title to the same, for all purposes in fee simple, free and clear of all incumbrances, before the railroad track hereinafter mentioned shall be laid thereon and before any of the payments hereinafter mentioned shall be made to the Party. The particular location of said station grounds shall be such as shall be designated by the Chief Engineer of the Company. The party further agrees, before the construction of said line of railroad shall be commenced, to furnish the Company with an itemized statement of the actual cost to the Party of acquired right of way for said line of railroad over lands not owned or controlled by the Party.

2. The line of railroad provided for in this agreement shall be constructed on such line and grades, and in such manner as may be specified by the Chief Engineer of the Company.

3. The Party hereby agrees to do all grading and to furnish all ties and timbers required for the construction of said line of railroad and to lay and construct the same, except as herein otherwise provided.

4. The Company hereby agrees to furnish and deliver to the Party at said connection south of Batesville, Mississippi, all rails, switches, frogs, spikes and joint fastenings needed the construction of said line of railroad, and also to haul free

of charge, over its line of railroad to said point of connection, for all other material required for the construction and maintenance of said line of railroad.

5. The Company also agrees to drive all piling required for the construction of trestles on said line of railroad, at its own cost and expense, but said piling shall be furnished by the Party and shall be of such kind and quality as shall be approved by said Chief Engineer, and all other work required for the construction of said trestles shall be done by the Party, and in accordance with the standard specifications of the Company.

The Company shall also drive all piling required for the construction of a bridge over the Yocona River, at its own cost and expense, but said piling shall be furnished and creosoted by, or at the expense of, the Party. The Company shall provide and erect a steel span of sufficient length upon which to carry said line of railroad over the Yocona River, said bridge to be supported by creosoted pile piers, and all work required for the construction of said bridge other than the driving of the piling and erecting said span, shall be done by the Party, and in accordance with plans and specifications approved by said Chief Engineer.

The Party also agrees, at their own expense, to make all necessary changes in, additions to, or rebuilding which shall at any time be required by the United States Government or the State of Mississippi by reason of said Yocona River at the location of said bridge having been, or hereafter being, declared a navigable stream.

6. The said line of railroad shall be laid with not less than three thousand (3,000) ties to the mile, which said ties shall be satisfactory to the Company.

7. The Company hereby agrees that it will pay the Party for constructing said railroad as aforesaid, and for the material furnished by the Party therefor, the actual cost thereof as shown by statements to be rendered by the Party and accepted by the Company as hereinafter provided for, up to but not exceeding the sum of two thousand dollars ($2,000) for each mile of track built, including not more than three

(3) side tracks, which said side tracks shall be located at such points as shall be designated by said Chief Engineer.

8. The Company hereby agrees that on or before the twenty-fifth day of each month it will pay the Party ninety (90) per cent of the amount due the Party for all work done by it during the preceding calendar month, at the prices above mentioned, and the remaining ten (10) per cent shall be retained by the Company until the railroad shall be completed and ready for use in accordance with the terms of this contract and to the satisfaction of the Company, when the balance due the Party shall be paid in full by the Company, provided, however, that all claims preferred by any person or persons for labor done or materials or supplies furnished the Party for or on account of the construction of the said railroad may be deducted from any moneys due the Party and either paid to such claimants or held until such claims are paid or otherwise settled.

The Party agrees, if requested by the Company to do so, to furnish the Company such proofs as it may require, that all claims, as provided in the next preceding paragraph, against the Party, or against any sub-contractors of the Party, for, in or on account of the construction of the said railroad, have fully settled, such proofs to be furnished as a condition to be performed before payment shall be made by the Company for such work, and also if requested by the Company to do so, to furnish to the Company at the end of each month during the progress of such work a sworn statement of the amount due to other persons for labor done or materials or supplies furnished for, in and on account of such work, togther with certified copies of all pay rolls, and bills paid and unpaid, for, in and on account of such work.

9. For the purpose of ascertaining the amount due the Party from the Company under the terms of Article seven (7) hereof, and for the purpose of facilitating an adjustment with the Party of any amounts wheih may become due the Party under the terms of Article twenty-three (23) hereof, the Party agrees to furnish the Company at the end of each month, an itemized statement showing the actual expense incurred by

the Party in the construction of said line of railroad during such month.

10. The Party hereby agrees to keep and maintain the said line of railroad in proper repair and condition during the term of this agreement, and shall have the right, which is hereby granted, to operate the same for all general railroad purposes, but such operation shall be conducted by the Party in strict compliance with all existing and future laws of the State of Mississippi affecting the operation of railroads, and in accordance with all rules, regulations and orders of the Railroad Commission of said State. And if the Company shall be held liable to the State of Mississippi, any county or municipality therein, or to any person, firm or corporation on account of any violation by the Party of any such law, rule, regulation or order, the Party will indemnify and save harmless the Company from any loss, damage or expense which it may incur or suffer by reason of such violation.

11. Upon the expiration of this agreement, whether by lapse of time or in any other manner, the Party agrees to turn the said line of railroad over to the Company in as good condition as when first constructed, ordinary wear excepted, and free from all liens, subject, however, to the payments to be made by the Company as provided in Article twenty-three (23) hereof.

12. The Company agrees to pay the Party for maintaining said railroad at the rate of one hundred and forty-three ($143.00) dollars per mile of main track per year from and after the completion of same.

13. All logs which shall be cut from lands owned or controlled by the Party, or either of them, or which may hereafter be purchased by them, or either of them, in Panola, Tallahatchie and Quitman Counties, Mississippi, and within reach by logging lines of the line of railroad to be constructed in accordance with this agreement, shall be delivered on board cars to the Company at said connection south of Batesville, and shall be carried to the mills of the Party at Memphis, Tennessee, at the current tariff rates of the Company, and the Party hereby agrees that all lumber made from said logs shall be shipped from Memphis on the railroad of said Company.

14. The Party hereby agrees to pay for all death, damage, loss or injury to persons or property which may be caused by or on account of the construction or the operation of the said railroad to be constructed by the Party while said railroad is operated by the Party, and to indemnify the Company and save it harmless from all liability therefor, and in case of any suits brought against the Company to recover for any such death, damage, loss or injury, the Party hereby agrees to pay all attorney's fees, costs and expenses which may be incurred in defending such suits, as well as all damages which may be recovered therein. And in order to guarantee the faithful fulfillment of the provisions of this article, the Party agrees to furnish the Company a good and sufficient bond in the sum of.....thousand dollars, in such form and with such surety as may be approved by the Company.

15. The Company further agrees upon completion of the said railroad, or at such time as the Party may desire, to deliver to the Party on board cars at the connection above mentioned south of Batesville, sufficient second-hand rail and angle bars to lay two and one-half (2½) miles of track, to be used by the Party for logging tracks to be connected with the railroad to be constructed as herein provided.

16. The rails and angle bars herein agreed to be furnished shall be weighed before delivery and a memorandum made to be signed by the parties hereto, of the number of tons of rail of two thousand two hundred and forty (2,240) pounds each, and of the number of angle bars actually delivered to the Party.

17. For the use of the rails and angle bars furnished and leased to the Party by the Company, the Party hereby agrees to pay the Company rent at the rate of six (6) per cent per annum on the value thereof, which is hereby fixed at twenty-four dollars and fifty cents ($24.50) per ton for each ton of rail of two thousand two hundred and forty (2,240) pounds, and one and sixty-five hundredths (1.65) cents per pound for angle bars,—payments to be made to the Company at the office of its local Treasurer at Chicago, Illinois, at the end of each period of six (6) months from and after the delivery of

said materials to the Party. The Party also agrees to pay the Company the usual freight charges on said materials from the point of shipment to Batesville, Mississippi, and also the cost of loading said materials on cars at point of shipment.

18. The Party shall not use, nor allow to be used, the said rails and angle bars, for any purpose other than that hereinabove specified, nor affix the same to land over which the Party has not a lawful right of way for railroad purposes, nor remove, nor allow to be removed the same from the location above specified, without the written consent of the Company first had and obtained.

19. The Party shall pay all taxes that may be levied or assessed upon the rails and angle bars furnished under this agreement, while the same remain in their possession.

20. It is understood and agreed that the title to the said rails and angle bars shall remain in the Company, that they shall remain personalty and shall not become a part of the realty, and that upon the termination of this agreement the Party will take up the rails and angle bars and deliver them loaded upon the cars of the Company on its railroad, unless mutually satisfactory agreements shall previously have been made for the continued use of said rails and angle bars by the Party. Upon the delivery of the said rails and angle bars to the Company, it shall cause the same to be weighed, and shall furnish a statement of the weights to the Party, whereupon the Party shall, and hereby agrees that it will, pay the Company for the difference between the weight of the rails received from, and returned to, the Company, at the rate of twenty-four dollars and fifty cents ($24.50) for each ton of two thousand two hundred and forty (2,240) pounds, and for the difference between the weight of the angle bars received from, and returned to, the Company, at the rate of one and sixty-five one hundredths (1.65) cents per pound.

21. The Company's waiver of any of the conditions or provisions of this contract, at any time, or from time to time, shall apply only to the particular instances in which such waivers occur, and shall not in any way affect or impair the further continuance or force of such conditions or provisions, at any subsequent breach or breaches thereof.

22. Unless sooner terminated as hereinafter provided, this agreement shall continue in force for a period of twenty (20) years from and after the date hereof.

23. The Company shall have the right which is hereby reserved, to terminate this agreement at any time it may so desire, upon giving to the Party sixty (60) days notice in writing of its desire to terminate this agreement. And in case this agreement shall be terminated as in this article provided, the Company agrees to pay the Party such a proportion of the entire amount expended by the Party in the construction of said line of railroad less the amount paid by the Company to the Party for constructing said line of railroad, as the period remaining unexpired when this agreement shall be so terminated shall bear to the entire term of twenty (20) years. Provided, however, that in ascertaining the amount to be paid by the Company to the Party, in case this agreement shall be so terminated, the fair value of materials furnished by the Party in the construction of said line of railroad shall be used instead of the actual cost of such material to the Party, which fair value shall be determined by agreement between the parties hereto, and if they are unable to agree, by arbitration in the manner hereinafter provided. And provided, further, that in case this agreement shall be terminated as in this article provided, at any time before the expiration of ten (10) years from the date of this agreement, there shall also be included in the amount so to be paid by the Company to the Party the actual cost to the Party of that portion of the right of way occupied by said line of railroad which the Party was required to purchase, said amount so to be paid for such portion of said right of way to be the same as that shown on the statement to be furnished by the Party to the Company as provided in article one (1) hereof.

In case this agreement shall not be terminated by the Company before the expiration of ten (10) years from the date hereof, then there shall be no obligation on the part of the Company to pay the Party for any of the right of way occupied by said line of railroad. Neither shall there be any obligation on the part of the Company to pay any amount whatever to the Party on account of the construction of said line

of railroad or the material or right of way furnished therefor, in case this agreement shall continue in force during the full term of twenty (20) years, but said line of railroad and all material used in its construction and all of the right of way occupied by same shall be and become the absolute property of the Company.

24. If, at any time, a difference of opinion shall arise between the parties hereto, or if arbitration shall become necessary under the provisions of this agreement, the matter in dispute shall be determined in the following manner:

The Party desiring arbitration may demand such arbitration, by giving written notice thereof to the other party to the dispute, setting forth therein the point or points in dispute, and the name of some persons appointed by it to act as arbitrator. The party to whom such notice is given shall appoint a second arbitrator and give the party demanding the arbitration notice in writing of such appointment within ten (10) days from the time of such notice. The two arbitrators so chosen shall appoint a third arbitrator, and if they do not agree upon a third arbitrator within thirty (30) days of the time of notice of the appointment of the second arbitrator, such third arbitrator shall be appointed, upon the application of either party hereto, by a Judge of the United States Court, for the time being, of the District or Circuit in which Batesville is situated; and in case of the refusal or neglect of the party so notified to appoint the second arbitrator within ten (10) days after it shall have been given a written demand for arbitration as aforesaid, then the single arbitrator appointed by the party demanding such arbitration shall, at the request of the party appointing him, proceed to hear and determine the matter as if he were arbitrator appointed for that purpose by both parties to the dispute and the three arbitrators so chosen, or the said arbitrator, if there shall be but one, shall proceed at once to hear and determine the matter in controversy after giving to both parties reasonable notice, of which the arbitrators or arbitrator shall be the judge, of the time and place of hearing. If any arbitrator shall decline or fail to act, the party by whom he was chosen shall appoint another to act in his place. All the arbitrators shall be wholly disinterested

in the matter in controversy and in no way connected, to the parties hereto. The decision or award of the arbitrators or of a majority of them, or of the said arbitrator, if there shall be but one, made in writing, after hearing the parties or party who shall have attended in compliance with notice given as above required, shall be final and binding upon the respective parties. In arbitrations under this agreement each party shall be responsible for the compensation of the arbitrator acting on its behalf, and the compensation of the third arbitrator shall be paid one-half by each of the parties hereto.

25. This agreement shall be binding on the successors and assigns of the Illinois Central Railroad Company and R. J. Darnell, Inc., and upon the heirs, executors, administrators and assigns of R. J. Darnell, individually, and shall be joint and several as to the parties of the second part.

In witness whereof, the parties hereto have caused these presents to be executed in duplicate, the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,
By W. L. Park, Vice President.
R. J. DARNELL, INC.,
By R. J. Darnell, President.
R. J. DARNELL. (Seal).

Attest:
BURT A. BECK, Asst. Sec.
Attest:
R. J. WIGGS, Sec.

State of Illinois,
County of Cook.

I, F. S. Gibbons, a Notary Public in and for said State and County, certify that W. L. Park, Vice President of the aforesaid Illinois Central Railroad Company, who is personally known to me, and known to me to be such Vice President of said Corporation, and the same person whose name is subscribed to the above instrument as Vice President, appeared before me this day in person, in said State and County, and being by me first duly sworn did say that he was Vice Presi-

dent of said Corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he acknowledged that he signed, sealed and delivered the said instrument as the free and voluntary act and deed of the said corporation, and as his own free and voluntary act as such Vice President, for the use and purposes therein set forth.

Given under my hand and official seal this twenty-second day of June, A. D. 1910.

(Seal) F. S. GIBBONS, Notary Public.

State of Tennessee,
Shelby County.

Before me, Elliot Lang, a Notary Public in and for the State and County aforesaid, personally appeared R. J. Darnell, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of R. J. Darnell, Inc., the within named bargianor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as president.

Witness my hand and seal, at office in Memphis, Tennessee, this the 7th day of June, 1910. ELLIOTT LANG,
(Seal) Notary Public.

State of Tennessee,
County of Shelby.

Personally appeared before me, Elliott Lang, a Notary Public in and for the state and county aforesaid, R. J. Darnell, the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and seal, at office in Memphis, Tennessee, this 7th day of June, 1910. ELLIOTT LANG,
(Seal) Notary Public.

This agreement, made and entered into this 19th day of July, A. D. 1910, by and between the Illinois Central Railroad Company, Party of the first part, hereinafter called the Company, and R. J. Darnell, Inc., a corporation of Memphis, Tennessee, and R. J. Darnell, individually, a resident of Memphis, Tennessee, parties of the second part, hereinafter for convenience designated and referred to as the Party, witnesseth:

Whereas, the parties hereto hereby stipulate that the .....in Article Fourteen of the instrument between the same parties dated June 7th, 1910, be filled by the words "Twenty-five."

It is further agreed that the Party will furnish the Company a policy of Employers Liability Insurance in such form and with such insurance company as may be approved by the Company for the protection of the Illinois Central Railroad Company and the Batesville-Southwestern Railroad Company against any liability on account of death, damage, loss or injury to persons or property which may be caused by or on account of the construction or the operation of the said railroad to be constructed by the Party while said railroad is operated by the Party, the amount of the said policy to be not less than ($25,000.00) twenty-five thousand dollars for any one accident, the policy being made payable to the Illinois Central Railroad Company or the Batesville-Southwestern Railroad Company or R. J. Darnell, their successors and assigns, in the order named as their interests may appear.

In witness whereof, the parties hereto have caused these presents to be executed in duplicate, the day and the year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,
By W. L. Park, Vice President.
R. J. DARNELL, INC.,
By R. J. Darnell, President.
R. J. DARNELL. (Seal).

Attest:
BURT A. BECK, Asst. Secy.
Attest:
R. J. WIGGS, Secy.

Following appears on back:

R. J. Darnell vs. Geo. R. Edwards, et als. Ex. A. U. S. Court, So. Dist. of Miss. Filed Sept. 20, 1913. L. B. Moseley, Clerk.

COPY.

This agreement, made and entered into this the twenty-first day of June, A. D. 1911, by and between the Illinois Central Railroad Company, party of the first part, the Batesville-Southwestern Railroad Company, party of the second part, and R. J. Darnell, Inc., a corporation of Memphis, Tennessee, and R. J. Darnell, individually, a resident of Memphis, Tennessee, parties of the third part, witnesseth:

Whereas, on the seventh day of June, 1910, the parties of the first part and the parties of the third part made and entered into an agreement whereby the party of the third part agreed to construct a railroad track from a point on the railroad of the party of the first part at or near Batesville, in Panola County, Mississippi, extending southwesterly therefrom along such particular route as might be selected by the party of the first part, the general location of said railroad track, however, to be in a southwesterly direction intersecting the Chickasaw Boundary Line in or near Section Five (5), Township Twenty-seven (27) North, Range Two (2) East, thence southwesterly and southerly over the Yocona River to a point on the south bank of said river, in Tallahatchie County, and

Whereas, in Article Fourteen (14) of said agreement of June 7th, 1910, the parties of the third part agreed to indemnify the party of the first part and to save said party of the first part harmless from certain liability, same being more specifically set forth and described in Article 14 of said agreement of June 7th, 1910, for the faithful fulfillment of which stipulation in said Article 14 contained it was agreed that the parties of the third part shall furnish the party of the first part a good and sufficient bond in an amount thereafter to be agreed upon between the party of the first part and the parties of the third part.

Now therefore, in consideration of the mutual covenant and agreements in the said contract of June 7th, 1910, contained, and of the sum of one dollar ($1.00) to each of the parties hereto in hand paid, receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. The blank space in Article Fourteen (14) of the instrument between the Illinois Central Railroad Company of the first part, and R. J. Darnell, Inc., and R. J. Darnell, individually, dated June 7th, 1910, be filled by the worty "Fifty," agreed upon at the time the said agreement of June 7th, 1910, was executed by the parties thereto.

2. It is expressly understood and agreed by and between the parties hereto that the provisions of said bond of fifty thousand dollars ($50,000.00) hereinabove provided for shall inure to the benefit of the Batesville-Southwestern Railroad Company as well as the Illinois Central Railroad Company.

3. It is further understood and agreed that the contract dated July 19th, 1910, between the Illinois Central Railroad Company, of the first part, and R. J. Darnell, Inc., and R. J. Darnell, individually, of the second part, shall be cancelled, annulled, abrogated and held for naught.

4. It is further understood and agreed that nothing in this contract contained shall in any way affect the provisions of the contract of June 7th, 1910, hereinabove referred to.

In witness whereof, the parties hereto have caused these presents to be executed in duplicate, the day and the year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY,
By W. L. Park, Vice President.

BATESVILLE-SOUTHWESTERN R. R. CO.,
By W. L. Park, Vice President.

R. J. DARNELL, INC.,
By R. J. Darnell, President.

R. J. DARNELL. (Seal).

I. C. R. R.
(Seal) Burt A. Beck, Asst. Sec.

Attest:
R. J. Wiggs, Sec.
B. S. W. R. R. CO.
(Seal) Burt A. Beck, Asst. Sec.

Attest:
R. J. Wiggs, Sec.
Seal of R. J. Darnell, Inc.
Execution approved.
RVF.

Following appears on back:

"Exhibit B" to Original Bill. R. J. Darnell vs. Geo. R. Edwards, et als. U. S. Court, So. Dist. of Miss. Filed Sept. 20, 1913. L. B. Moseley, Clerk.

COPY.

This agreement, made and entered into this sixth day of July, A. D. 1912, by and between the Illinois Central Railroad Company, party of the first part, the Batesville-Southwestern Railroad Company, party of the second part, and R. J. Darnell, Inc., a corporation of Memphis, Tennessee, and R. C. Darnell, individually, a resident of Memphis, Tennessee, parties of the third part, witnesseth:

Whereas, on the seventh day of June, 1910, the parties of the first part and the parties of the third part agreed to construct a railroad track from a point on the railroad of the party of the first part at or near Batesville, in Panola County, Mississippi, extending southwesterly therefrom along such particular route as might be selected by the party of the first part, the general location of said railroad track, however, to Boundary Line in or near Section Five (5), Township Twenty-seven (27) North, Range Two (2) East, thence southwesterly and southerly over the Yocona River to a point on the south bank of said River, in Tallahatchie County, and

Whereas, the said parties of the first and third parts mutually desire to change Article Fourteen (14) of said agree-

ment of June 7th, 1910, so that the same will read as hereinafter provided:

Now, therefore, in consideration of the mutual covenants and agreements in said contract of June 7th, 1910, contained, and of the sum of one dollar ($1.00) to each of the parties hereto in hand paid, receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. That Article Fourteen (14) of said agreement of June 7th, 1910, shall be, and is hereby changed so as to read as follows:

"14. The Party hereby assumes all risk of and responsibility for all death, damage, loss or injury to, persons or property which may be caused by or on account of, or occur during the construction of said railroad to be constructed by the Party or which may be caused by or on account of the maintenence or operation of said railroad by the Party, and against all liability for any such death, damage, loss or injury, the Party agrees to indemnify the Company and any company organized to construct and operate said railroad, and save them and each of them harmless therefrom. The Company, or any company organized to construct and operate said railroad, shall have the right to compromise or settle any claims against them for any such death, damage, loss or injury, to persons or property, but settlement, adjustment or compromise shall be made without notice to the Party of the claim and the proposed settlement, adjustment or compromise, and consent of the Party thereto. In case of any suits for injuries sustained during the construction, maintenance and operation, and brought against the Company or any company organized to construct and operate said railroad, to recover for any such death, damage, loss or injury, the Party agrees to pay all attorneys' fees, costs and expenses which may be recovered in defending such suits, as well as all damages which may be recovered therein. And in order to guarantee the faithful fulfillment of the provisions of this Article, the Party agrees to furnish the Company a good and sufficient bond in the sum of fifty thousand dollars ($50,000.00) in such form and with such surety as may be approved by the Company."

2. It is acknowledged that the Batesville-Southwestern Railroad Company is the company which was organized to construct and operate said railroad, the construction of which was provided for in said agreement of June 7th, 1910, and it is expressly understood and agreed by and between the parties hereto that the provisions of said bond of fifty thousand dollars ($50,000.00) provided for in said Article Fourteen (14), as charged by this agreement, shall inure to the benefit of the Batesville-Southwestern Railroad Company, as well as to the benefit of the Illinois Central Railroad Company.

3. It is further agreed and understood that the contract dated July 19, 1910, between the Illinois Central Railroad Company, of the first party and R. J. Darnell, Inc., and R. J. Darnell, individually, of the second part, and the contract dated June 21st, 1911, between the Illinois Central Railroad Company of the first part, the Batesville-Southwestern Railroad Company, of the second part, and R. J. Darnell, Inc., and R. J. Darnell, individually, of the third part, shall be cancelled, annulled, abrogated and held for naught.

4. It is further understood and agreed that nothing in this contract contained shall in any way affect the provisions of the contract of June 7th, 1910, hereinabove referred to, save as herein specifically provided.

In witness whereof, the parties hereto have caused these presents to be executed in triplicate, the day and the year first above written.

(Signed) ILLINOIS CENTRAL RAILROAD COMPANY,
By W. L. Park, Vice President.

BATESVILLE-SOUTHWESTERN R. R. CO.,
By W. L. Park, Vice President.

R. J. DARNELL, INC.,
By R. J. Darnell, President.

R. J. DARNELL. (Seal).

Attest:
I. C. R. R. CO.
(Seal) Burt A. Beck, Asst. Sec.

Attest:
B. S. W. R. R. CO.
(Seal) Burt A. Beck, Asst. Sec.
R. J. Wiggs, Sec.

Attest:
(Seal) R. J. DARNELL, Inc.
Execution Approved. RVF.
Form Approval. CLS.

Following appears on back:

"Exhibit C" to Original Bill. R. J. Darnell vs. Geo. R. Edwards, et als. U. S. Court, So. Dist. of Miss. Filed Sept. 20, 1913. L. B. Moseley, Clerk.

MINUTES OF MEETING OF BOARD OF DIRECTORS.
R. J. DARNELL, INC.
August 11, 1913.

The Board of Directors of R. J. Darnell, Incorporated, met at its domicile in Memphis, Tennessee, on this date,..... .....there being present all of the members of the said Board, R. J. Darnell, R. J. Wiggs, R. H. Darnell, Elliott Lang, F. M. Darnell. The following resolution was adopted unanimously:

"Whereas, on the 7th day of June, A. D. 1910, R. J. Darnell, individually, owned in the Counties of Panola, Quitman and Tallahatchie, in the State of Mississippi, a large amount of timber lands, lying in a southwesterly direction from the town of Batesville, in said County of Panola, which town of Batesville, lies on the line of the Illinois Central Railroad in the State of Mississippi, and on the day aforesaid the said R. J. Darnell and the said Illinois Central Railroad Company entered into a written agreement for the building of a certain line of Railroad in a generally southwesterly direction from the Town of Batesville, in the said County of Panola, and extending into the said County of Quitman, by virtue of which contract the railroad was to be constructed, as heretofore

described, partly at the expense of the Illinois Central Railroad Company and partly at the personal expense of said R. J. Darnell, individually, and

Whereas, it was the demand of the Illinois Central Railroad Company that the said contract should be signed—not only by R. J. Darnell, individually, but by this corporation, R. J. Darnell, Inc.

Whereas, the said R. J. Darnell, individually, has carried all of the expenses required of the Party in said contract and has expended on the construction and equipment of the said railroad, the sum of $162,667.67, and has always been, as between himself and R. J. Darnell, Inc., taken and considered to be the real owner and lessee under signed contract.

Whereas, the said corporation of R. J. Darnell, Inc., has not expended any part of the money for the construction and equipment of the said road—which has all been at the expense of R. J. Darnell, individually, and of the said Illinois Central Railroad Company.

Whereas, under the said contract R. J. Darnell, individually, is to operate and is operating the said line of railroad, the same being a private enterprise of his own under said contract with the Illinois Central Railroad Company, and the said contract grants to the said R. J. Darnell and R. J. Darnell, Inc., jointly a lease of the said railroad for a term of years, and

Whereas, by written agreement made and entered into on June 21st, 1911, between the said Illinois Central Railroad Company, of the first part, and the Batesville Southwestern Railroad Company, of the second part, and R. J. Darnell, Inc., and R. J. Darnell, individually, of the third part, and by further written agreement made between the last mentioned parties in writing, on the 6th day of July, 1912, certain modifications were made in the said contract of June 7th, 1910, the Batesville-Southwestern Railroad Company, a corporation chartered and incorporated under the laws of the State of Mississippi, becoming a party by the said last two contracts of the 21st of July, 1911, and the 6th of July, 1912, respectively.

Now, therefore, in consideration of the fact that the said R. J. Darnell, individually, has expended all of the money to be expended by the party in said contract in the construction and equipment of the said line of railroad, it is ordered by this Board of Directors that all of the interests of the said R. J. Darnell, Inc., in and to the said line of railroad, and all of its equipment and in and to the lease and contract with the Illinois Central Railroad Company, which was in writing and signed on June 7th, 1910, and in and to contracts heretofore mentioned of July 21st, 1911, and July 6th, 1912, be, and the same is hereby transferred, assigned, sold and conveyed to him—the said R. J. Darnell, individually.

Be it further ordered by the Board of Directors that the President of this Board of Directors be, he is hereby authorized, empowered and directed, to execute under the seal of this corporation, and transfer to said R. J. Darnell, individually, the deed of this corporation, conveying to him all of the right, title and interests of the said R. J. Darnell, Inc., and to the said railroad, which extends from the town of Batesville, in the State of Mississippi, Panola County, in a generally southwesterly direction in and through the Counties of Panola and Quitman (a distance of about 17 miles) and in all equipment, cars, engines, rolling stock of every kind, and all other property used by the said railroad designated as the Batesville-Southwestern Railroad, and in and to said contracts of June 7th, 1910, and into the said contract of June 21st, 1911, and of the said contract of July 6th, 1912, and this transfer is to be attested by the secretary of the corporation.

I, R. J. Wiggs, Secretary, of R. J. Darnell, Inc., do hereby certify that the foregoing is a true and correct copy of the minutes of a meeting of the Board of Directors of said corporation, held this day 11th of August, 1913.

(SEAL) R. J. WIGGS, Secretary.

Following appears on back:

R. J. Darnell vs. Geo. R. Edwards, et als. U. S. Court, So. Dist. of Miss. Filed Sept. 20, 1913. L. B. Moseley, Clerk.

This contract, made and entered into this the 11th day of August, A. D. 1913, by and between R. J. Darnell, Incorpora-

ted, a corporation organized, chartered and incorporated, under the laws of the State of Tennessee, having its domicile at Memphis, Tennessee, of the first part. and R. J. Darnell, a citizen and resident of the State of Tennessee and said City of Memphis, of the second part.

Witnesseth:

That, whereas at a meeting of the Board of Directors on this date, there was passed the following resolutions:

Whereas, on the 7th of June, A. D. 1910, R. J. Darnell, individually, owned in the Counties of Panola, Quitman and Tallahatchie, in the State of Mississippi, a large amount of timber lands lying in a southwesterly direction from the town of Batesville, in said County of Panola, which town of Batesville lies on the line of the Illinois Central Railroad in the State of Mississippi, and on the day aforesaid the said R. J. Darnell and the said Illinois Central Railroad Company entered into a written agreement for the building of a certain line of railroad in a generally southwesterly direction from the town of Batesville, in the said County of Panola, and extending into the said County of Panola, and extending into the said County of Quitman, by virtue of which contract the railroad was to be constructed, as heretofore described, partly at the expense of the said Illinois Central Railroad Company and partly at the expense of R. J. Darnell, individually, and

Whereas, it was the demand of the Illinois Central Railroad Company, that the said contract should be signed—not only by R. J. Darnell, individually, but by this corporation, R. J. Darnell, Inc.

Whereas, the said R. J. Darnell, individually, has carried all the expenses required of the Party in said contract and has expended on the construction and equipment of the said railroad, the sum of $162,667.67, and

Whereas, the said corporation of R. J. Darnell, Inc., has not expended any part of the money for the construction and equipment of the said road—which has all been at the expense of R. J. Darnell, individually, and of the said Illinois Central Railroad Company.

Whereas, under the said contract of R. J. Darnell, individually, is to operate, and is operating the said line of railroad, the same being a private enterprise of his own, and under said contract with the Illinois Central Railroad Company, and the said contract grants to the said R. J. Darnell and R. J. Darnell, Inc., jointly, a lease of the said railroad for a term of years, and

Whereas, by written agreement made and entered into on June 21st, 1911, between the said Illinois Central Railroad Company, of the first part, and the Batesville-Southwestern Railroad Company, of the second part, and R. J. Darnell, Inc., and R. J. Darnell, individually, of the third party, and by further written agreement made between the last mentioned parties, in writing 6th day of July, 1912, certain modifications were made in the said contract June 7th, 1910, the Batesville-Southwestern Railroad Company, a corporation chartered and incorporated under the laws of the State of Mississippi, becoming a party of the said last two contracts of the 21st of June, 1911, and the 6th day of July, 1912, respectively.

Now, therefore, in consideration of the fact that the said R. J. Darnell, individually, has expended all the money to be expended by the party in said contract in the construction and equipment of the said line of railroad, it is ordered by this Board of Directors that all of the interests of the said R. J. Darnell, Inc., in and to the said line of railroad, and all of its equipment, and in and to the lease and contract with the Illinois Central Railroad Company, which was in writing, and signed on June 7th, 1910, and in and to contracts heretofore mentioned on June 21st, 1911, and July 6th, 1912, be and the same is hereby transferred, assigned, sold and conveyed to him, the said R. J. Darnell, individually.

Be it further recorded by the Board of Directors, that the President of this Board of Directors be, and he is hereby authorized, empowered and directed, to execute under the seal of this corporation, and transfer to R. J. Darnell, individually, the deed of this corporation, conveying to him all rights, title and interests of the said R. J. Darnell, Inc., and to the said railroad, which extends from the town Batesville, in the State of Mississippi, Panola County, in a generally Southwesterly

direction in and through the Counties of Panola and Quitman, (a distance of about 17 miles) and in all equipment, cars, engines, rolling stock of every kind, and all other property used by the said railroad, which railroad is designated as the Batesville-Southwestern Railroad Company, and in and to said contracts of June 7, 1910, and in and to the said contract of June 21st, 1911, and of the said contract of July 6th, 1912, and this transfer, is to be attested by the Secretary of this corporation."

Now, therefore, in consideration of the premises and by authority from the said order of the said Board of Directors the said party of the first part does hereby convey to the said party of the second part, all of its rights, title and interests in and to a certain line of railroad in the Counties of Panola and Quitman in the State of Mississippi, known as the Batesville-Southwestern Railroad Company, extending from the town of Batesville in the said County of Panola, in a southwesterly direction for about seventeen miles, partly in the said County of Panola and partly in the said County of Quitman, it being hereby intended to convey to the said party of the second part, all of the interests of the party of the first part in the right of way, road bed, tracks, buildings of any kind, rolling stock, franchises and privileges that the said party of the first part and the said party of the second part have in the said line of railroad, and all engines, cars, and other equipment of the said railroad, and all other property used by the said parties in the operation of the said line of railroad, and for like consideration, the said party of the first part hereby transfers, assigns and conveys unto the said party of the second part, all of its right, titles and interests in and to a certain lease, contract executed on the 7th day of June, 1910, in writing between said parties of the first and second parts, therein called, the "Party," and the Illinois Central Railroad Company called the "Company" therein, under which said contract the said line of railroad was built and jointly leased to the said parties of the first and second parts hereto, and assigns, transfers and conveys to the party of the second part, all of its rights, title and interest in certain other contracts, in writing, of date of June 21st, 1911, between the Illinois

Central Railroad Company, as party of the first part, the Batesville-Southwestern Railroad Company as party of the second part, and R. J. Darnell, individually, and R. J. Darnell, Incorporated, of the third part; and transfers, assigns and conveys to the said party of the second part all of its rights, title and interest in and to a certain other contract, in writing, of date July 6th, 1912, between the Illinois Central Railroad Company, party of the first part, and the Batesville-Southwestern Railroad Company, party of the second part, and R. J. Darnell, Inc., and R. J. Darnell, individually, as party of the third part, and the said party of the second part, by the acceptance of this conveyance doth covenant to, and with the said party of the first part that he will perform all of the covenants contained in each part and all of the said three written contracts above mentioned to be performed or done by the said party of the first part will indemnify and save harmless the said party of the first part from any breach of any of the said covenants, of which the said party of the second part may be guilty, and will indemnify and save harmless the said party of the first part from any liability, on any bond or bonds, which may have been executed by the said parties of the first and the second parts, jointly, to the said Illinois Central Railroad Company, or to the Batesville-Southwestern Railroad Company, for the performance of either, or all, of the said contracts, and for any liability assumed by the said parties of the first and second parts hereto, jointly, in the said bond or bonds.

It is the intention of this contract that in consideration of the fact that the said R. J. Darnell, party of the second part, has individually paid and expended all of the money that was to be paid and expended by the said parties of the first or second part hereto, in the construction, maintenance and operation of the said line of railroad, that the said party of the first part does hereby convey absolutely to the said party of the second part, all of its right, title and interests to the said line of railroad and everything belonging thereto, and in and to the said contracts above mentioned.

In the witness whereof, the said party of the first part has hereunto set its hand, by its President with the seal of

the said corporation attached, and attached by the Secretary of the said party of the first part, this the day and date first above mentioned and written.

(Signed) R. J. DARNELL, INCORPORATED,
R. J. Darnell, President.

Attested:
R. J. Darnell, Secretary.

Copy.

The following appears on the back:

Ex. E. No. 9. R. J. Darnell vs. Geo. R. Edwards, et al., R. R. Com. U. S. Court, So. Dist. of Miss. Filed Sept. 19, 1913. L. B. Moseley, Clerk.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 2
Cancels I. C. C. No. 1.

BATESVILLE-SOUTHWESTERN RAILROAD
R. J. DARNELL, Lessee.

A-1

(Cancels No. 1)

Freight Tariff of Local Rates Applying on Classes and Commodities, Between Stations on the

BATESVILLE-SOUTHWESTERN RAILROAD

Class rates shown herein may be used only when no specific class rates have been provided. Commodity rates shown herein may be used only when no specific commodity rates have been provided. When governed by classification which also contains distances or mileage rates in such classification. These class rates may not be used either by themselves or in combination in preference to any specific class rate, nor may these commodity rates be used either by themselves or in combination in preference to any other specific commodity rate.

Governed (except as otherwise provided herein) by Southern Classification No. 38, Agent W. R. Powe's I. C. C. No. 15, and by exceptions to said Classification as published

therein under "Note 23," supplements and amendments thereto and reissues thereof.

Issued April 27, 1912.

R. J. DARNELL, Lessee,
Memphis, Tennessee.

Effective May 27, 1912. Issued by
ELLIOTT LANG, Traffic Manager,
Memphis, Tennessee.

RULES.

1. Whenever a carload (or less than carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in car load quantities (or less than car load quantities, as the case may be).

2. The Commodity Rates shown herein apply only on the articles specifically named.

3. The minimum charge for a single shipment will be for one hundred pounds at the class rate to which such shipment belongs, but in no case less than 25 cents. If the shipment contains articles in two or more classes, no one of which is classified higher than first-class, the minimum shall be for one hundred pounds of the article taking the highest rate, but if any one of the articles is classified higher than first-class, the minimum charge shall be for one hundred pounds at the first-class rate.

4. The minimum car load weight will be twenty-four thousand pounds, unless otherwise specified in the Classification of this Tariff.

DEMURRAGE RULES.

1. Free Time.

On all commodities in carload quantities forty-eight hours (two days) free time will be allowed for loading or unloading.

2. Computing Time.

(a) On cars held for loading, time will be computed from the first 7 o'clock A. M. after placement on public delivery tracks or on private sidings.

(b) On cars held for unloading, time will be computed from the first 7 A. M. after placement on public delivery tracks or on private sidings and after notice of arrival is sent consignee.

3. Demurrage Charge.

(a) After the expiration of free time, as provided for in the foregoing, a charge of one ($1) dollar per car per day or fraction thereof shall be made for the delay of cars and the use of tracks, except as provided for in paragraph (b), this rule.

(b) No demurrage charges shall be assessed for the detention of cars on account of weather interference, bunching of cars for loading and unloading, demand of overcharge or errors or omissions on the part of railroad agents or employes.

DISTANCES IN MILES.

From— \ To—	Batesville, Miss.	Asa, Miss.	Crowder, Miss.
Batesville, Miss.	.....	7.3	15.7
*Asa, Miss	7.3	.....	8.4
*Crowder, Miss.	15.7	8.4	.....

*No agent; freight must be paid.

RATES OF FREIGHT.

CLASSES—In Cents Per One Hundred Pounds.

Distances—	1	2	3	4	5	6	A	B	C	D	E	H
5 miles and under	27	24	20	17	14	13	12	15	14	7	17	22
10 mls. and over 5 mls.	34	28	24	20	18	16	14	17	18	9	24	24
15 mls and over 10 mls.	41	33	28	25	22	18	16	19	20	11	27	26
20 mls and over 15 mls.	47	37	31	27	25	19	18	23	22	12	33	28

	Per Bbl.			Per 100 Pounds		
Distances—	F.	K.	L.	M.	N.	O.
5 miles and under	24	*11	* 8	*7	*5	*5½
10 miles and over 5 miles	28	*13	*12	*7½	*5½	*5¾
15 miles and over 10 miles	32	*15	*14	*8	*6	*6
20 miles and over 15 miles	36	*17	*16	*9	*6½	*6½

*Reduction in Rates.

COMMODITIES.

COTTON.

5 miles and under	†11 cts. per 100 lbs.
10 miles and over 5 miles	†12½ cts. per 100 lbs.
15 miles and over 10 miles	†14 cts. per 100 lbs.
20 miles and over 15 miles	†15 cts. per 100 lbs.

COTTON SEED, CAR LOADS, MINIMUM 30,000 POUNDS.

5 miles and under	†6½ cts. per 100 lbs.
10 miles and over 5 miles	†7½ cts. per 100 lbs.
15 miles and over 10 miles	†8 cts. per 100 lbs.
20 miles and over 15 miles	†8½ cts. per 100 lbs.

LOGS, CAR LOADS, MINIMUM 4,500 FEET.

10 miles and under	†$2.80 per 1,000 feet
15 miles and over 10 miles	†$3.35 per 1,000 feet
20 miles and over 15 miles	†$3.90 per 1,000 feet

LUMBER, CAR LOADS, MINIMUM 10,000 FEET.

10 miles and under	†$3.35 per 1,000 feet
15 miles and over 10 miles	†$3.90 per 1,000 feet
20 miles and over 15 miles	†$4.50 per 1,000 feet

BOLTS AND BILLETS, STRAIGHT CAR LOADS—Minimum Weight 50,000 Pounds, Except When the Capacity of the Car is Less, in Which Case the Capacity of the Car Will Be the Minimum.

10 miles and under	†4½ cts. per 100 lbs.
15 miles and over 10 miles	†5½ cts. per 100 lbs.
20 miles and over 15 miles	†6¾ cts. per 100 lbs.

†Advance in Rates.

Following appears on back:

R. J. Darnell vs. Geo. R. Edwards, et als. Exhibit F to O. B.

To the Honorable Railroad Commissioners of the State of Mississippi:

We, the undersigned land owners adjacent to and contiguous to the Batesville-Southwestern Railway Line, and having timber on said land which we wish to market, are precluded from doing so by reason of the extortionate, unjust and confiscatory tariff rates of said railroad on logs, as shown by the tariff rates on file in the office of the Secretary of this Honorable Commission. Said petitioners respectfully state and show that a reduction of one cent on the present tariff rate of the Batesville-Southwestern Railroad would be equitable and just to shippers, and at the same time fair and reasonable compensation to said railroad in that behalf. Premises considered the prayer of the petitioners is that said railroad be cited to appear on a day certain to answer this petition, and on final hearing hereof may it please this Honorable Commission, by an apt and proper order a reduction in the tariff on logs as herein prayed for.

Very respectfully,

A. A. WHEAT, Jr.,
MRS. M. B. WHEAT,
J. C. KUYKENDALL,
MRS. W. H. MITCHELL,
J. C. KUYKENDALL,
J. H. BOULE,
M. H. MIMS.

The following appears on the back:

R. J. Darnell, Ex. G. /OB, Geo. R. Edwards, et. al. R. R. Coms. No. U. S. Court, So. Dist. of Miss. Filed Sept. 20th, 1913. L. B. Moseley, Clerk.

CITIZENS OF CHARLESTON

vs. No. 4021.

BATESVILLE & SOUTHWESTERN R. R.

This cause this day came on to be heard on the petition of A. A. Wheat, et al., for a reduction of the freight rates on logs on said railroad, and the Petitioners being present

through their Counsel and the Batesville & Southwestern Railroad having been duly and legally served with citation and being present and represented by Mr. Elliott Lang, its Traffic Manager, and the Mississippi Railroad Commission after hearing and considering said petition and the evidence adduced, pro and con, on the hearing hereof, doth find that the freight rate on logs in carload lots per thousand feet as fixed by the Freight Tariff of the said railroad, issued under date of April 27th, 1912, is excessive, and the same is hereby disallowed and disapproved.

It is hereby ordered that the following freight rate on logs in carload lots, minimum of 4500 feet, shall apply on the said railroad:

OAK, ASH AND HICKORY, CAR LOAD LOTS, MINIMUM 4500 FEET.

10 miles and under	$1.50 per 1,000 feet
15 miles and over 10 miles	$1.75 per 1,000 feet
20 miles and over 15 miles	$2.00 per 1,000 feet

ON GUM AND ALL OTHER LOGS, EXCEPT OAK, ASH AND HICKORY, CARLOAD LOTS, MINIMUM 4500 FEET.

10 miles and under	$1.25 per 1,000 feet
15 miles and over 10 miles	$1.50 per 1,000 feet
20 miles and over 15 miles	$1.75 per 1,000 feet

It is further ordered that said Batesville and Southwestern Railroad repay to such person or persons as have shipped logs over said railroad and paid the illegal and excessive freight rate per 1,000 feet on logs under said Tariff of date of April 27th, 1912—on surrender by such person or persons of original bills of lading showing such payments, the difference between the rate fixed under and by this order and that fixed by the tariff of said railroad company under date of April 27, 1912. The said Tariff of the said Railroad of April 27th, 1912, was only filed with this Commission on the 3rd day of June, 1913, which was after the Petitioners in this cause had complained to the Commission of the excessive, illegal and arbi-

trary rate so attempted to be fixed by said railroad under its said Tariff of April 27th, 1912, and of which this Commission had no knowledge prior to the 3rd of June, 1913.

Done and ordered this the 23rd day of July, 1913.

I hereby certify that the above and foregoing is a true and correct copy of an order made by the Mississippi Railroad Commission on the day and year named therein, and is taken from Minute Book 6, Pages 4 and 5 of the records of this office and of which I am the proper custodian.

Witness my hand and seal this 9th day of July, 1915.

JAMES GALCERAN,
Secretary Railroad Commission.

(SEAL)

BATESVILLE SOUTHWESTERN RAILROAD, R. J. DARNELL, LESSEE,

Memphis, Tennessee.

COMPARATIVE STATEMENT OF RATES ON LOGS.

	5 miles & less.	10 miles & over 5.	15 miles & over 10.	20 miles & over 15.
N. C. & ST. L. R. R. Tariff 37589 I. C. C. #2001-A	1⅓	2	2⅓	2½
L. & N. R. R. G. F. O. 1143 I. C. C. A-10583 Rates into Memphis:				
Billing	3	3	3	3
Net	2	2	2	2
SOUTHERN RY. HINTON'S WLT. #1. I. C. C. A-40 W. L. T. #2 L. C. C. A.—3795				
Billing	3	3	4½	4½
Net	2	2	2½	2½

So. Ry. in Miss. #1330 I. C. C. 250 Local rates on Logs	3	3	3	4
B&O. S. W. R. R. TARIFF #2424 I. C. C. 6866 Flat local rates on logs between stations in Indiana. Local	2½	2½	3	3
A & V. R. R. TARIFF 894–C I. C. C. 2416 GROSS NET	4 1¾	4 1¾	4 1¾	4 2
M. & O. R. R. 6560 I. C. C. A.–853 GROSS 6265 I. C. C. A.–821 NET	3 2	4 2	4 2	5 2
C. R. I. & P. R. R. 2400 E— I. C. C.–C 9235, West of Memphis into Memphis Straight Rates		3½	4	4
St. L. I. M. & S. 695–A I. C. A.–951 The I. M. & S. use rates in their tariff 1110–C, I. C. C. A–1657 in Waybilling logs to Memphis. These rates are published specifically from each station and cannot be reconciled to mileage scale, but they run about 2 cts. over net rates.	Twenty miles and Less.			

ARKANSAS COMMISSION SCALE:				
GROSS	4	4½	4½	4½
NET	2	2	2	2
TEXAS COM'S SCALE	Twenty Miles and less			3½
MISSOURI COM'S SCALE	Twenty Miles and Less			3½
ILLINOIS COM'S SCALE	2.6	2.9	3.2	3.4
INDIANA COM'S SCALE	2.5	2.5	2.5	3.1

C. & M. G. #39 Minimum 40,000 I. C. C. 52—	6 miles & less.	10 miles & over 6.	15 miles & over 10.	20 miles & over 15.
	2	2½	3	4
KENTWOOD GREENSBURG & S. W. B 2—I. C. C.—4 Any distance				3
NEW ORLEANS, NEW ALBANY & NATCHEZ:—B2, I. C. C. 5: Twenty miles or less				3
FERNWOOD & GULF A-124 OTHER than Pine I. C. C. #31	3	3½	4	4

LIBERTY WHITE: B-2 Oak, Ash, etc.	10 miles & over 5.	15 miles & over 10.	20 miles & over 15
	4	4½	5

SARDIS & DELTA: #2 I. C. C. #2 Logs any distance 4

The following appears on the back.

R. J. Darnell Ex. I. to OB.

Geo. R. Edwards, et. at R.R. Coms.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Complainant

vs.

No. 9.

F. M. Sheppard, Geo. R. Edwards and W. B. Wilson, Mississippi Railroad Commission.

This cause came on this day to be heard in vacation, before Honorable H. C. Niles, Judge of the United States District Court for the Jackson Division of the Southern District of the State of Mississippi, on the application of the complainant for a temporary restraining order against the defendants as Railroad Commissioners from the execution of an order of the said Railroad Commissioners of July 23rd, 1913, and it appearing to the Court that it is right and proper that the prayer for the temporary restraining order be not granted as prayed for in the original bill of complaint herein.

It is therefore ordered, adjudged and decreed that the hearing of this cause on the application for a preliminary injunction shall be held at Birmingham, Alabama, on the 3rd day of October, 1913, and the Judge of this Court hereby requests the Honorable David D. Shelby of Huntsville, Alabama, a Judge of the Circuit Court of Appeals, and W. I. Grubb, of Birmingham, Alabama, a Judge of the District Court within this Circuit, to sit with him at the said hearing.

It is further ordered that the Clerk of this Court shall mail a copy of this order to the Attorney General of the State of Mississippi, and a copy of this order to the Governor of the State of Mississippi, and to each of the defendants named herein.

Ordered, Adjudged and Decreed in vacation, this the 19th day of September, 1913.

H. C. NILES.

Judge of the U. S. Dist. Court for the Jackson Div. of the Southern District of Mississippi.

I, L. B. Moseley, Clerk of the District Court of the United States for the Southern District of Mississippi, do hereby certify that the foregoing is a true and correct copy of the original order as same appears of record in my office at Jackson, Mississippi.

Witness my hand and seal of said Court, hereunto attached at Jackson, Miss., this the 19th day of Sept., 1913.

L. B. MOSELEY, Clerk,
Southern District of Mississippi.

To the United States Marshal to execute. L. B. Moseley, Clk.

I have this day executed the within order personally, by delivering to G. R. Edwards, a member of the Mississippi Railroad Commission, Defendant, a true copy of the same, at McCool, Mississippi.

This the 21st day of September, A. D. 1913.

A. M. STORER, U. S. Marshal.
By C. H. THOMAS, Deputy.

Following appears on back:

No. 9. R. J. Darnell vs. Miss. R. R. Com. To be served on Geo. R. Edwards, McCool, Miss., W. B. Wilson, Corinth, Miss. Marshal's costs: Service on two defts., $4.00; Expenses, $1.43; Total, $5.43. U. S. Court, So. Dist of Miss. Filed Sept. 30, 1913. L. B. Moseley, Clerk. Montgomery & Montgomery, Attys., at Tunica, Miss.

I have this day executed the within order personally by delivering to W. B. Wilson, a member of the Mississippi Railroad Commission, the within named Defendant, a true copy of the same at Corinth, Miss.

This the 21st day of September, A. D. 1913.

A. M. STORER, U. S. Marshal.
By L. V. CARPENTER, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF THE STATE OF MISSISSIPPI.

R. J. Darnell, Complainant

vs.

George R. Edwards, F. M. Sheppard and W. B. Wilson, composing and being the Railroad Commissioners of the State of Mississippi, Defendants.

To the Hon. Henry C. Niles, Judge of the United States District Court, sitting in Equity in and for the said Division of the said District, in said State:

The joint and several answers of the defendants, George R. Edwards, F. M. Sheppard and W. B. Wilson, composing and being the Railroad Commissioners of the State of Mississippi in the bill of complaint exhibited against them, respectfully show the Court, as follows, to-wit:

Respondents admit the non-residency of the Complainant as alleged in said bill and admits the residence of each of the Defendants as alleged therein, and that they compose the Railroad Commission of the State of Mississippi, and that they, as Commissioners are vested with the power of fixing reasonable and proper rates to be charged by the different railroad corporations operating in the State of Mississippi. They also admit that they have now power to arbitrarily and unjustly require of any railroad company or individual operating a railroad in the state of Mississippi, the operation of its railroad under a tariff rate which is unjust and discriminating or confiscatory, or will not allow the said railroad a reasonable and fair profit in its business as a common carrier.

As to the allegation in complainant's bill that he is and has been for many years prior to the 7th day of June, A. D. 1910, the owner of a large tract or tracts of timber lands lying within the State of Mississippi, in the counties of Panola, Tallahatchie and Quitman, which lands are valuable for timber, etc., these respondents say that they are not advised as to who is the real owner of said lands, whether the complain-

ant, individually, or the corporation with which he is connected, to-wit: R. J. Darnell, Incorporated, but as to this, these respondents say that it makes no material difference as the said R. J. Darnell and the said R. J. Darnell, Incorporated, are practically one and the same person as hereinafter more fully appears.

Respondents further say that they know nothing of the desire of the complainant in this bill as an individual to operate the timber from said lands, but they do admit and charge that on the 7th day of June, A. D. 1910, the complainant, together with R. J. Darnell, Incorporated, entered into a contract with the Illinois Central Railroad Company, mentioned in said bill and operating a line of railroad as alleged in said bill, as shown by Exhibit "A" to this bill, to construct a railroad from the said town of Batesville through the counties of Panola, Quitman and Tallahatchie in the direction and in the manner in said bill alleged, and as in said contract provided and for the purposes in said bill alleged.

Respondents further admit, as alleged in said bill, that on the 21st day of June, A. D. 1911, the said Illinois Central Railroad Company and the said complainant and R. J. Darnell, Incorporated, and the Batesville-Southwestern Railroad Company, entered into a contract as alleged in said bill with reference to the said railroad which said contract is made Exhibit "B" to said bill.

Respondents further admit that the contract marked "Exhibit C" to said bill was entered into as alleged in said bill.

Respondents further admit that the corporation designated in said bill as the Batesville-Southwestern Railroad Company, was incorporated and chartered under the laws of the State of Mississippi, with authority to construct a line of railroad therein.

Respondents deny that R. J. Darnell, Incorporated, did not have any pecuniary interest in the matter incorporated by contracts A, B, and C, made exhibits to this bill, and that said Darnell, Incorporated, was made a party to said contract merely because the same was desired by said Illinois Central Railroad Company and not because the said R. J. Darnell,

Incorporated, intended to participate in the benefits of the said contract, or in any manner carry any of the expense of the building of the said line of railroad contemplated, and deny that the complainant was himself, individually and alone, interested in said contract. Respondents will hereinafter show fully the interest of said R. J. Darnell, Incorporated, in said contracts and what was contemplated by all of the parties to contracts A, B and C, at the time of their execution.

Respondents deny that by virtue of the three contracts mentioned in said bill, to-wit: A, B and C, that the complainant, R. J. Darnell, individually, acquired the lease for the term of twenty years of what is known as the Batesville-Southwestern Railroad, which was constructed from the town of Batesville on the line of the Illinois Central and deny that the complainant has erected and built the said line of railroad, or that he has individually equipped said railroad or that he will pay the said Illinois Central Railroad Co., for what it has furnished, etc. Respondents admit that said railroad has been constructed from said town of Batesville in the direction provided by said contract. They admit that 17 miles of railroad has in fact been constructed and that the same has been equipped by the complainant in this bill, or that the same has been constructed and equipped out of his own finances or that he or anyone else for him, has expended the sum of $162,667.67 in the construction and equipping of said railroad. Respondents deny that the Batesville-Southwestern Railroad Company and R. J. Darnell, Incorporated, have expended anything in the building and equipping and operation of said line of railroad, and deny that R. J. Darnell is the owner of said railroad or that he has been since the date of the said first contract continuously the owner or the lessee of said line of railroad and alone with the Illinois Central Railroad Company interested in the said contracts.

Respondents admit the said line of railroad is now in operation as a common carrier of freight from Batesville to the Southwestern terminus of said road at the Yocona River, and also says that the same is a common carrier of freight to the northern terminus of said road at Batesville.

Respondents say that they are not advised as to what kind of a timber contract the said complainant has with the corporation known as R. J. Darnell, Incorporated, with reference to cutting timber from the lands in Panola, Quitman and Tallahatchie counties, referred to in said bill, but as to this respondents say upon information and belief that the operations of the complainant and the said R. J. Darnell, Incorporated, are practically one and the same thing, and that the acts of the individual are for the benefit of the corporation, and the acts of the corporation are for the benefit of the individual, as will more fully appear hereinafter. Respondents admit upon information and belief that a large percentage of the business of said railroad consists in the shipment over it of timber from the lands mentioned in said bill for the benefit of R. J. Darnell, Incorporated, and that as alleged in said bill, nearly all of the business of said railroad as a common carrier consists of hauling logs to market over said railroad from points on its said line to Batesville, or in shipment to Batesville via Illinois Central Railroad; that the outgoing shipments are practically the entire business of the said railroad, etc., as alleged in said bill; that the revenue of said railroad has been derived almost exclusively from the outgoing shipments over it of saw-logs from points along its line or adjacent or accessible thereto. As to this respondents say that they are advised and believe and so charge the facts to be, that the reason why the said Darnell, Incorporated, has practically monopolized the traffic on said road heretofore, is because of the enormous and unjust conditions imposed by the said Batesville-Southwestern Railroad Company, R. J. Darnell, individually, and R. J. Darnell, Incorporated, as will more fully appear hereafter.

Respondents admit that said R. J. Darnell, Incorporated, did at a meeting of its board of directors, held at its domicile in the City of Memphis, State of Tennessee, on the 11th day of August, A. D. 1913, pass a resolution as set out in said bill, and made "Exhibit D" and thereby that said R. J. Darnell, Incorporated, did authorize the the transfer and conveyance of all its interest to R. J. Darnell, individually. Respondents further admit that in pursuance of said resolution by the board of directors of said R. J. Darnell, Incorporated, the conveyance

as alleged in said bill, and made "Exhibit C" thereto, was executed, but as to this resolution and conveyance, respondents are advised and believe and charge the fact to be that the same was done by said R. J. Darnell, individually, and R. J. Darnell, Incorporated, after your respondents had undertaken to establish a log tariff on the Batesville-Southwestern Railroad and that these things were had and done by said R. J. Darnell, individually, and R. J. Darnell, Incorporated, for the express purpose and with the avowed intent of so shaping matters that the said R. J. Darnell could file his bill and enjoin said Commissioners from enforcing its lawful order as will more fully hereafter appear, and because they realized that under the laws of the State of Mississippi no foreign corporation could lease said Batesville-Southwestern Railroad.

Respondents admit that on the 27th day of April, 1912, the Batesville-Southwestern Railroad Company, provided through its Traffic Manager, Elliott Lang, a tariff on freight handled by the said Batesville-Southwestern Railroad Company, and among other things a tariff rate on logs as alleged in said bill, but respondents specifically deny that said freight rate was a reasonable tariff as a common carrier, as will more fully appear hereafter. Respondents deny that the rate which was established for logs as alleged in said bill was reasonable and fair and as cheap a rate as could be charged for the freight on logs by the Batesville-Southwestern or any other railroad. Respondents admit that certain citizens interested in the logging business in the vicinity of said railroad filed their petitions with the Railroad Commission of Mississippi complaining of the rates on logs by said Batesville-Southwestern Railroad, or R. J. Darnell, individually, or R. J. Darnell, Incorporated, and charging that the same was extortionate, unjust and confiscatory and respondents deny that the rate which had been established by said road and which was then in force was a reasonable tariff on logs.

Respondents admit that on the 23rd day of July, 1913, the petition filed by said citizens complaining of the log rate on said Batesville-Southwestern Railroad came on for hearing but they deny that the rate then prevailing was just, reasonable and fair, but upon the other hand, these respondents say

that in their capacity as public officials, they believed the same to be unreasonable, unjust and unfair and confiscatory, and that on said date after a full hearing of witnesses for the petitioners and the Batesville-Southwestern Railroad Company, and all other parties claiming to have any interest in the controversy, respondents established the rate as alleged in said bill of complaint, which was in the judgment of respondents, a fair and reasonable rate to be charged for the transportation of logs over said railroad, and a rate at which said railroad could earn a fair and legitimate profit on its investment, including the cost of construction, and the legitimate cost of operation and repairs and up-keep.

Respondents further deny that said railroad cannot haul and transport logs or persons on its line of railroad at the rate established by said railroad commission; it denies that it will cost the complainant, or said railroad or anybody else in the operation more to haul said logs than the amount allowed by order of said commission.

Respondents deny that the expense of operating said road from July 1, 1912, to June 30, 1913, inclusive, amounted, as alleged in said bill, for operating expenses, $4,296.20; they deny that the rental of said road based on one twentieth interest of the amount invested, amounted to $8,133.39, as alleged in said bill; they deny that the operating expenses of said road during said time amounted to $12,439.59; they deny that during said time it moved one mile 245,789 tons at the average cost of moving one ton of freight one mile of $5.06, as alleged in said bill; they deny that the cost of hauling one thousand feet of oak or gum or other logs 11 miles amounted to $3,613.00 as alleged in said bill; they deny that the cost of hauling one thousand feet of oak or gum or other logs 13 miles was a little more than $3.50 per thousand, as alleged in said bill.

Respondents further deny that the cost of the road and equipment was $162,667.67; they deny that the total receipts of said road was the sum of $15,553.01; they deny that its operating expenses were $12,429.59, as alleged in said bill; they deny that the difference in operating expenses and total receipts was only $3,123.42, as alleged in said bill; they deny that the said railroad company did not earn over and above

its operating expenses, its up-keep, etc., more than 6 per cent; they deny that said railroad company only earned above its expenses 1.92 per cent on its investment; they deny that the tariff promulgated by the Mississippi Railroad Commission was useless, unjust and arbitrary, unreasonable and unfair.

Respondents deny that under the tariff which has been established by it that the complainant and the Batesville-Southwestern Railroad Company will have to haul logs of all persons offering at a rate which will not pay the expense of hauling them. Respondents deny that the rate put in force by it is discriminatory, against the complainant, or the Batesville-Southwestern Railroad Company, by any fair and just comparison of the tariff rates of other roads similarly located and constructed and similarly operated, as will more fully appear hereinafter.

Respondents say that they are not advised as to whether the rates as exhibited by said bill in "Exhibit I" is the correct rate of the lines mentioned in said exhibit, and therefore, cannot deny or affirm as to this, and therefore respondents ask strict proof as to this; but in this regard respondents would say they are not advised as to the conditions under which said roads are operated, and charge that what may be a reasonable rate under certain conditions on one road, might be an unreasonable rate on another, and respondents are advised that it is not proper and right to fix the rates on this particular road with reference to rates on other roads which are not shown to be similar in construction or operated under similar conditions; but, however, this may be, respondents deny that said commission had any purpose whatever to discriminate against the Batesville-Southwestern Railroad, and deny that it did, in fact, do so, but charge the fact to be that a reasonable and fair rate was established, and a rate at which said railroad could earn a reasonable profit.

Respondents deny that the rate fixed by it is unreasonable, unfair and discriminatory and that the rate required the complainant or anyone else to transport logs for less than actual cost, or for less than what would be a fair and reasonable price for the services performed. They deny that the order

of said Railroad Commission is void and in violation of the rights of complainant or anyone else.

Respondents deny, as alleged in said bill, that said Commission has no legal right to control and regulate the rates charged by him, or by the Batesville-Southwestern Railroad Company, on any kind of freight carried by said line or on said lines by him as lessee, for the reasons as set out in said bill that he, as an individual citizens of the State of Tennessee and himself solely leasing and operating the said line of railroad, and is not operating as a corporation or association. Respondents will not make further denial of this part of the answer because in their opinion the bill is stating a legal proposition, which is to be solely determined by the facts set out in said bill and denied in said answer.

Respondents deny the right of complainant to come into this honorable court and enjoin the railroad commission for the reasons that are alleged in said bill; respondents deny that the complainant, if he has any just complaint, has not a complete and adequate remedy at law, and deny that he has any standing whatever in a court of equity; respondents deny that any unjust and outrageous wrongs have been perpetrated upon him or upon said Batesville-Southwestern Railroad Company; respondents deny that the action of the said Commission will deprive him or the Batesville-Southwestern Railroad Company, or anyone else, of their property without due process of law; respondents deny that the action of said Commission is in violation of the constitution of Mississippi and of Section 14, of the Constitution of the United States; respondents deny that anything done by said Commission is violative of any constitutional right of the complainant or the Batesville-Southwestern Railroad Company, either under the constitution of the State of Mississippi or the Constitution of the United States.

Respondents now having specifically answered the allegations in said bill contained, or such parts of them as they are advised are material or necessary for them to make specific answer thereto, by way of more completely and specifically setting forth its defense, state and charge the truth to be that the Illinois Central Railroad Company, and R. J. Darnell, in-

dividually, and R. J. Darnell, Incorporated, got together and conceived the unholy and illegal, unlawful, corrupt and fraudulent scheme of building a line of railway from the said town of Batesville in the direction of Charleston, Mississippi; that the said R. J. Darnell and the said R. J. Darnell, Incorporated, are and were but the straw men, figure heads, dummies and plaster in the hands of the said Illinois Central Railroad Company, in carrying out its illegal and unlawful designs touching the construction of said railroad.

Respondents show that under the terms of Freight Tariff .....promulgated by the Illinois Central and Yazoo & Mississippi Valley Railroad Company, the latter being a subsidiary line of the Illinois Central Railroad Company, prior to August 16, 1913, and re-affirmed in Tariff 629-C, its rate on logs, with certain exceptions, from the station of Aldens to the City of Memphis, was 1¾ cents per hundred pounds with a re-shipping rate of 1¼ cents which would equal in foot rate, the rate of $1.75 per thousand feet, with a re-shipping rate of $1.25 per thousand feet, and that the distance from the said station of Aldens to the said City of Memphis is 16.69 miles, and that the said Illinois Central Railroad Company, under said tariff, had in effect a rate on logs over its W. & M. V. lines from the station of Walls to the City of Memphis a rate of 1¾ cents per hundred pounds which is equivalent to a rate of $1.75 per thousand feet, with a re-shipping rate of $1.25; that the distance from the said station of Walls to the said City of Memphis, Tennessee, is fifteen miles; that the rate so fixed and established from the stations of Walls and said station of Alden to the City of Memphis, were rates fixed and established by the Illinois Central Railroad Company, without any compulsion on the part of the Railroad Commission of the State of Mississippi, or any other railroad commission; that the Illinois Central Railroad Company, under the said tariff 692-C had in effect a rate on logs from the town of Oakland to the City of Memphis, Tennessee, of 4¾ cents per hundred pounds, which was equivalent to $4.75 per thousand feet with a re-shipping or re-billing rate of $4.00, which would make the net rate on logs to be shipped into Memphis, manufactured and re-shipped, $4.00 per thousand feet; that the local rate

from Batesville to Memphis, Tennessee, as per said tariff 692-C on logs was 4¼ cents per hundred pounds with a re-shipping rate of 3½ cents per hundred pounds, making a net rate of 3½ cents per hundred pounds on logs shipped into Memphis for manufacture into lumber and re-shipment; that if the Batesville-Southwestern Railroad had been built and constructed and operated in the name of its true owner, the Illinois Central Railroad Company, it, the Illinois Central Railroad Company, could not, without doing violence to its said tariff, set forth in tariff 692-C, and without discriminating against points on the Batesville-Southwestern have charged a greater rate on logs than that charged on logs into Memphis from other stations which lay an equal distance from Memphis with the points along the line of the Batesville-Southwestern Railroad, but, by conspiring and confederating with R. J. Darnell and R. J. Darnell, Incorporated, and by pretendedly putting the title of the said Batesville-Southwestern railroad in R. J. Darnell, R. J. Darnell, Incorporated, and the Batesville-Southwestern Railroad, it was enabled to maintain its local tariff on logs from Batesville into the City of Memphis, originating on the Batesville-Southwestern Railroad and the Batesville-Southwestern Railroad was enabled to maintain its local rate on logs originating on the said line of railway into the said town of Batesville, thus enabling the Illinois Central Railroad Company, to do indirectly what it could not do directly; that from the town of Oakland, a station on the line of the Illinois Central Railroad Company, to the City of Memphis under its said tariff 692-C, said Illinois Central Railroad Company, exacted a tariff on logs of 4¾ cents per hundred pounds, or $4.75 per thousand feet, with a rebate of 75 cents per thousand feet on logs for re-shipment, making the net rate (interstate) on logs, from Oakland to Memphis, $4.00 per thousand feet, or four cents per hundred pounds, which is practically the same thing in round numbers; and respondents show that the distance from Oakland to Memphis, is 80.59 miles, and so respondents state and charge the truth to be that the Illinois Central Railroad Company, if it had constructed and operated the Batesville-Southwestern Road which has a total mileage of fifteen miles,

which, added to the mileage of the main line from Memphis to Batesville of 61 miles, would have made a total of 76 miles for all points on the Batesville-Southwestern Railroad, and could not have charged a greater interstate rate than four dollars per thousand feet or four cents per hundred pounds, on all logs originating on the line of the Batesville-Southwestern Railroad, and intended for Memphis for manufacture and re-shipment, the distance from Memphis to Batesville being 61.14 miles added to the entire length of the mileage of the Batesville-Southwestern, which is fifteen miles, would make the total mileage 76.14 miles, as against 80.59 miles, from Memphis to Oakland; and so, respondents state and charge the truth to be that the entire scheme and purpose of the complainant in this case and his confederates and associates, R. J. Darnell, Incorporated, and the Illinois Central Railroad Company, was, to build the Batesville-Southwestern Railroad and place the nominal ownership in R. J. Darnell and R. J. Darnell, Incorporated, or the Batesville-Southwestern Railroad, for the purpose of charging a higher rate than that permitted under its said tariff 692-C, as filed with the Interstate Commerce Commission at Washington.

Respondents state and charge the truth to be, that the so-called contract made and entered into by and between the Illinois Central Railroad Company and R. J. Darnell and R. J. Darnell, Incorporated, on June 7, 1910, was a fraud and a sham, pure and simple, that the terms of said contract show in unmistakable terms that the Illinois Central Railroad Company is the real and true owner of the Batesville-Southwestern Railroad Company, and has been the real and true owner of said road from the very day of its inception, and will continue to be the real and true owner in very truth and in fact until it is sold or otherwise disposed of to some person or persons other than R. J. Darnell, or R. J. Darnell, Incorporated; that under the terms of said contract, neither R. J. Darnell, nor R. J. Darnell, Incorporated, have any interest in said Batesville-Southwestern Railroad further than to hold it for the use and benefit of the Illinois Central Railroad Company, until such time as the parent sees fit to call its child home. Said contract so executed on the 7th day of June, 1910, among other re-

citals, and provisions, contains the following: That it was a contract entered into between R. J. Darnell, R. J. Darnell, Incorporated, and the Illinois Central Railroad Company, with the desire to construct a railroad, the route to be selected by the company, to remove timber; that Darnell, after a route had been selected by the railroad company, was to secure right of way and depot grounds which were to be given to the Illinois Central Railroad Company, without cost; that the route was to be designated by the Chief Engineer of the Illinois Central Railroad Company, that Darnell and Darnell, Incorporated, were to give detailed statement as to the cost of the acquisition of the right of way; that the road was to be constructed on a line to be selected by the chief engineer of the Illinois Central Railroad and on a grade and in manner to be determined by said chief engineer. Darnell was to grade and furnish ties and timber, the Illinois Central Railroad Company, was to furnish the expense part in the construction of said railroad, to-wit: rails, switches, spikes, etc., and was to haul all material for the construction of said road free of cost and was to drive piling at its own cost and expense, but the piling was to be furnished by Darnell and Darnell, Incorporated, subject to the approval of the chief engineer of the Illinois Central Railroad Company. All work was to be done according to the specifications of the railroad engineer; the Illinois Central Railroad was to erect a steel span over the Yocona River; Darnell and Darnell, Incorporated, were to do all other work as per plans to be approved by the chief engineer. Darnell and Darnell, Incorporated, agreed to make such changes as may be hereafter required and the Illinois Central was to pay Darnell and Darnell, Incorporated, actual cost as per statement to be rendered by Darnell and Darnell, Incorporated, up to amounts not to exceed two thousand dollars per mile built, including three side tracks. The Illinois Central Railroad Company, on the 25th day of each month was to pay Darnell and Darnell, Incorporated, 90 per cent of amount due for work done for preceding months at prices mentioned, and the balance, ten per cent, when the road was completed. Darnell and Darnell, Incorporated, were to pay all claims of all parties against the road for damages of all kinds, character

or description and were to furnish sworn statements of claims for work and pay-roll and were to furnish pay-rolls on account of such work and were to furnish at the end of each month expense account of construction and were to keep and maintain said road in repair and were given the right to conduct said road subject to the laws of the State of Mississippi, and the Railroad Commission and they, Darnell and Darnell, Incorporated, were to indemnify the Illinois Central Railroad Company against all loss for damages done to individuals or for violation of law or violation of the orders of the Railroad Commission, and they were to turn over said line of railroad to the Illinois Central Railroad Company, at the expiration of said contract in the same condition as when the same was received, usual wear and tear excepted. The Illinois Central Railroad was to pay Darnell and Darnell, Incorporated, the sum of $143.00 per mile of main line per annum after said road is constructed, for up-keep. All logs of Darnell were to be delivered to the Illinois Central Railroad at a connection south of Batesville on the line of the Illinois Central Railroad Company, for transportation to the mill of Darnell, Incorporated, at Memphis, Tennessee, and freight was to be paid thereon at current rates. Darnell agreed that all lumber made from said logs should be shipped over the Illinois Central Railroad from Memphis, and they, Darnell and Darnell, Incorporated, agreed to pay all damages and expenses connected with litigation and to save the Illinois Central harmless, and they further agree to give an indemnity bond for this purpose which said bond should be approved by the Illinois Central Railroad. The Illinois Central Railroad agreed to furnish second-hand rails for two and one half miles of logging road, which is not to be a part of the railroad but to be used for trams to get logs to the railroad; the rails and angle bars agreed to be furnished by the Illinois Central Railroad "shall be weighed before delivery and a memorandum made to be signed by the parties hereto of the number of tons of rail of 2240 pounds each and of the number of angle bars actually delivered to the party." For the use of the rails and angle bars furnished and leased to Darnell and Darnell, Incorporated, they agreed to pay "rent at the rate of six per cent

per annum on the value thereof, which was fixed at $24.50 per ton, for each ton of rail of 2240 pounds and 1.65 cents per pound for angle bars," payment to be made each six months after delivery was made. Darnell was to pay usual freight charges thereon and the cost of loading same, and he was not to use the rails for any purpose other than agreed upon without the consent of the Illinois Central Railroad. Darnell and Darnell, Incorporated, were to pay taxes on the rails and angle bars, with the clause, "it is understood and agreed that the title to said rails and angle bars shall remain in the company; that they shall remain personalty and shall not become a part of the railroad and that upon the termination of this agreement Darnell and Darnell, Incorporated, will take up the rails and angle bars and deliver them loaded upon the cars of the company on its railroad." Darnell and Darnell, Incorporated, were to pay for the difference between the weights of the rails and angle bars on the day when same were received and when same were re-delivered to the Illinois Central Railroad Co. The agreement or contract was to continue in force for twenty years unless sooner determined. The Illinois Central Railroad reserves the right to terminate this contract at any time on giving sixty days notice to Darnell and Darnell, Incorporated. If the contract was not terminated until the expiration of twenty years, the Illinois Central Railroad Company was to pay Darnell and Darnell, Incorporated, nothing for the building and constructing of said railroad nor for the right of way. The contract was to be binding on the assigns and successors of said parties to said contract.

And so respondents say that by the very terms and conditions of said contract of June 7, 1910, the said Darnell and Darnell, Incorporated, are shown to be mere contractors and to have not true and genuine interest in the said road, further than a permissive use of the same until such time as the Illinois Central Railroad saw fit to retake it from them. In other words, respondents state and charge the truth to be that Darnell and Darnell, Incorporated, were but contractors, pure and simple engaged and employed by the Illinois Central Railroad to build a line of railway which is denominated the Batesville-Southwestern Railroad. The road was to be built and con-

structed on a route to be selected by the chief engineer of the Illinois Central Railroad system and was to be done in accordance with the plans and specifications of said engineer, and subject to his approval in all things. Darnell and Darnell, Incorporated under the terms of said contract were authorized by their employers, the Illinois Central Railroad Company, to expend a sum not in excess of two thousand dollars a mile in throwing up a grade on the right of way of said railroad for which they were to be paid by the Illinois Central Railroad Company, as per the terms of said contract. The title to the valuable part of said line of railway was expressly held and reserved in the Illinois Central Railroad Company. Darnell and Darnell, Incorporated, agreed to pay rent for rails and angle bars, a most incongruous state of affiras, unless said rails and angle bars were to be used independent of the railroad proper.

Respondents further state and charge the truth to be that there is merchantable timber and logs other than oak and hickory adjacent to the right of way of the Batesville-Southwestern Railroad that could be and would be turned over to the Batesville-Southwestern Railroad for transportation but for the prohibitive tariff on said logs in existence as shown by tariff A-1 of the Batesville-Southwestern Railroad and by tariff of date July 27, 1912, and tariff A-4, and tariff A-3 of the Batesville-Southwestern Railroad, which were in effect prior to the time when the reduction complained of in this case was made by the Railroad Commission of the State of Mississippi.

Respondents further state and charge the truth to be that gum, red oak and other timber which largely exceeds in quantity the oak and hickory logs adjacent to said railroad could not be shipped under the said tariff of the Batesville-Southwestern Railroad above mentioned for the reason that logs of this character have not sufficient value to justify the tariff imposed.

Respondents further state and charge the truth to be that the tariff as imposed by the Batesville-Southwestern railroad and which was never submitted to the Railroad Commission of the State of Mississippi for approval as required by law,

absolutely prevented the shipment of gum, oak and other logs of like value and that unless parties owning tracts of timbered lands along said railroad were given relief against such excessive, outrageous and exorbitant tariffs they would have to allow their timber to go to waste and decay or else sell the same to R. J. Darnell, Incorporated. R. J. Darnell and R. J. Darnell, Incorporated, respondents state and charge the truth to be, are one and the same and that their interests are indentical and inseparable and that being true, it was and is, a matter of no moment as to the amount of freight charged on shipments of logs, because when R. J. Darnell, Incorporated, took five hundred dollars out of one pocket to pay freight on logs, it went into the pocket of R. J. Darnell, individually, which was but a shifting of dollars.

Respondents deny that the pretended and simulated lease by the Batesville-Southwestern Railroad to R. J. Darnell, legally worked any diversity of citizenship so as to give the Federal Court jurisdiction of this cause. No stream can ever rise higher than its source, nor could the Batesville-Southwestern Railroad by any sort of lease or contract, give R. J. Darnell exemption from the statute laws of the State of Mississippi, or give R. J. Darnell any greater right or power than it had itself. It is a domestic corporation, chartered under the laws of the State of Mississippi and subject to the laws of the State, and it could not exempt R. J. Darnell from a compliance with said laws. Respondents state and charge the truth to be that the Batesville-Southwestern Railroad has through its policy of excessive freight rate on logs, kept parties owning logs from shipping the same over said railroad, and has, by its own conduct, reduced and minimized its earning capacity but notwithstanding that fact, respondents state and charge the truth to be, and that too according to the allegations in the original bill of complaint in this cause filed, that the total operating expenses of said railroad for the year beginning July 1, 1912, and ending June 30, 1913, amounted to $4,296.20 and that the gross earnings derived from the operation of said railroad for said time amounted to the sum of $15,553.01, leaving a net income of $11,256.81, which is largly in excess of six per cent per annum on the total valuation of

$162,667.67, as shown by the allegation of the bill to be the real and true value of said railroad, but respondents deny that the value of said railroad is of said value but state and charge the truth to be that the value of said railroad is very much less than the said sum of $162,667.67. And these respondents demand strict proof as to the items constituting said value.

Respondents further show unto the court that the complainant, R. J. Darnell, has not come into this court of equity with clean hands, and they further show that under the statute laws of the State of Mississippi the said R. J. Darnell and the Batesville-Southwestern Railroad could have perfected an appeal from the order of the Railroad Commission complained of, and could have had incorporated in the bill of exceptions, all of the testimony adduced before said commission on the said hearing when said rates which are complained of were filed, reviewed by a court of competent jurisdiction.

And now, having fully answered, Respondents pray that the bill of complaint in this cause be dismissed and that they be allowed to go hence day.

GEO. R. EDWARDS,
F. M. SHEPPARD,
W. B. WILSON,
Railroad Commissioners, State of Mississippi.

GEO. H. ETHRIDGE,
Assistant Attorney General
for the State of Mississippi.

WOODS & KUYKENDALL,
Pleas for Respondent.

State of Mississippi,

Office of Secretary of State, Jackson.

I, Joseph W. Power, Secretary of the State of Mississippi, do hereby certify that the within and attached copy of the application, proclamation and statement or organization of the "Batesville-Southwestern Railroad Company," are true and correct copies of the originals of the said application, proclamation and statement of organization, as the same appear

of record in my office, being and constituting the charter of incorporation of the said Batesville-Southwestern Railroad Company.

Witness my hand and the Great Seal of the State of Mississippi, this the 26th day of June, A. D. 1913.

JOS. W. POWER,
Secretary of State.

(SEAL)

BATESVILLE-SOUTHWESTERN RAILROAD COMPANY.

To the Honorable E. F. Noel, Governor of the State of Mississippi:

We, the undersigned, desiring the creation and organization of a railroad corporation, under the statute in such cases provided, do hereby make application therefor:

1. The names of the applicants are: Edward Mayes, James C. Longstreet, T. Lamar Ross and Lucius L. Mayes. The residence of each of them is in the City of Jackson, Mississippi; and the post office address of each of them is in the City of Jackson, Mississippi.

2. The terminal points of the proposed railroad are a point on the Illinois Central Railroad, in or near the town of Batesville, Mississippi, and a point in or near the town of Charleston, in Tallahatchie County, Mississippi.

3. The line of the proposed railroad begins at a point on the Illinois Central Railroad, in or near the town of Batesville, Mississippi, in the County of Panola, and runs thence in a Southwesterly direction, to a point on or near the southern boundary line of Section 5, Township 27 North, Range 2 East of the Choctaw Meridian; thence continuing southerly or nearly southerly, to or near Section 31, Township 27, Range 2 East aforesaid; and thence southeasterly to a point in or near Charleston, County of Tallahatchie, State of Mississippi, aforesaid.

4. The name by which the corporation is to be known is the "Batesville-Southwestern Railroad Company."

5. The time within which it is hoped the railroad will be completed is one year from and after the creation of said corporation.—Edward Mayes, T. Lamar Ross, (By E. Mayes, Agent), J. C. Longstreet, L. L. Mayes.

The foregoing proposed charter of incorporation of the "Batesville-Southwestern Railroad Company," is respectfully referred to the Honorable Attorney General for his advice as to the Constitutionality and legality of the provisions thereof.

E. F. NOEL, Governor.

Jackson, Miss., June 2, 1910.

The provisions of the foregoing proposed charter of incorporation are not violative of the Constitution or laws of the State, if, in its enstruction it will comply with Section 187 of the Constitution of Mississippi as to County seats.

S. S. HUDSON, Attorney General.

Jackson, Miss., June 2, 1910.

State of Mississippi,

Executive Department, Jackson.

To all to Whom These Presents Shall Come, Greeting:

Whereas, Edward Mayes, T. Lamar Ross and L. L. Mayes, whose residence and post office address is Jackson, Mississippi, and James C. Longstreet, whose residence is Grenada, Mississippi, and post office address Jackson, Mississippi, have made application to me declaring their desire to organize a railroad corporation under the laws of this State.

Now, therefore, I, E. F. Noel, Governor of the State of Mississippi, by virtue of the authority vested in me by the Constitution and laws of the State, do issue this my

PROCLAMATION

authorizing the above named parties to organize a railroad corporation with the terminal points of said railroad as follows: A point on the Illinois Central Railroad, in or near the town of Batesville, Mississippi, and a point in or near the town of Charleston, in Tallahatchie County, Mississippi.

The line of the proposed railroad begins at a point on the Illinois Central Railroad, in or near the town of Batesville, Mississippi, in the County of Panola, and runs thence in a

southwesterly direction to a point on or near the northern boundary line of Section 5, Township 27, North, Range 2 East of the Choctaw Meridian, thence continuing southerly, or nearly southerly, to or near Section 31, Township 27, Range 2 East, aforesaid, and thence southeasterly to a point in or near the town of Charleston, County of Tallahatchie, State of Mississippi, aforesaid.

The name by which this corporation shall be known is the "Batesville-Southwestern Railroad Company."

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed. This done at the Capitol in the City of Jackson, this the Fourth Day of June, A. D. 1910.

(SEAL) By the Governor: E. F. NOEL.

JOS. W. POWER, Secretary of State.

Recorded June 7, 1910.

STATEMENT OF ORGANIZATION OF BATESVILLE-SOUTHWESTERN RAILROAD COMPANY.

Conformably to Section 4077 of the Mississippi Code of 1906, the Board of Directors do hereby make the following statement of the organization of said company:

First. The said company was organized on the 9th day of June, 1910, by a meeting of the incorporators thereof, at which meeting in conformity to the statute, a Board of Directors was elected consisting of James C. Longstreet, Edward Mayes, T. E. Hill, A. E. Clift and John G. Jones, also by a meeting of the said directors held in Jackson, Mississippi, on the 20th day of July, 1910, all directors being present, at which meeting James C. Longstreet was elected President of said Company, W. L. Park, First Vice President; R. J. Darnell, Second Vice President; M. P. Blauvelt, Treasurer, and Burt A. Beck, Secretary.

Secondly. The amount of the entire capital stock of said company is one hundred thousand dollars ($100,000.00) divided into one thousand shares of the amount of one hundred dollars each.

In attestation whereof we, the undersigned, the Directors of the said company, do hereby sign this statement as required

by law in such case provided: Edward Mayes, Director; A. E. Clift, Director; T. E. Hill, Director; J. C. Longstreet, Director; J. G. Jones, Director.

Sworn to before me Aug. 2, 1910, by Edward Mayes.

L. L. MAYES, Notary Public.

Filed and recorded Aug. 5, 1910.

Following appears on back:

Charter and Report of organization of Batesville-Southwestern Railroad Company.

Darnell v. Edwards, et al.

(District court S. D. Mississippi, November, 1913).

No. 9.

On Application for injunction Pendente Lite. Application denied.

Montgomery & Montgomery, of Tunica, Mississippi, for R. J. Darnell, Complainant.

George H. Ethridge, Assistant Attorney General of Mississippi, and Woods & Kuykendall, of Charleston, Mississippi (James Stone on the brief) for George R. Edwards, F. M. Sheppard and W. B. Wilson, composing the Railroad Commission of Mississippi, Defendants.

Before Shelby, Circuit Judge, and Niles & Grubb, District Judges. Per Curiam. This is an application by the Complainant for an injunction pendente lite to restrain the Railroad Commission of Mississippi from putting into effect a rate on logs over a railroad leased to, and operated by the complainant, and which ran from Batesville, a station upon the railroad of the Illinois Central Railroad Company, in the State of Mississippi, southwesterly, a distance of about seventeen miles. The complainant assails the rate made by the Commission as being confiscatory and in violation of the Fourteenth amendment to the Constitution of the United States.

2.

That question for determination is whether Darnell, lessee and operator of the Batesville-Southwestern Railroad, will receive after return on the reasonable value of the prop-

erty devoted to public use, if the Railroad Commission's rates on logs are made effective.

The bill shows that the railroad earned for the fiscal year, ending June 30th, 1913, $15,553.01, and that the operating expenses the same year were $4,296.20, leaving net earnings of $11,256.81. Against these the plaintiff charges one twentieth of the amount alleged to have been expended by him in construction $163,467.67, as annual rent, upon the erroneous idea that it was a proper rental charge and operating expense. After deducting this rental charge, there is left the sum of $3,123.42, 1.72% on the sum so expended by the complainant, instead of 6% on that sum, or $9,760.06, which complainant contends that he should have. These figures are based on the plaintiff's own rates.

As we see it, the question should be solved without reference to the question of interest plaintiff has in the railroad, or the reimbursement to him of the amount expended by him in construction. The bill shows a net operating income of $11,256.81 and the remaining inquiry is, "Is this a fair return on the property (that is railroad and equipment) employed in the earning of it?" This depends upon what the property, so employed, consists of and the value of it.

The Railroad was built at the joint expense of the Illinois Central Railroad Company and the plaintiff. The affidavit of Elliott Lang shows that plaintiff expended $163,467.67 for construction and equipment. There is nothing to show how much was expended by the Illinois Central Railroad Company for the part it did, viz: furnishing track material, driving piles, etc. The records show that the Illinois Central, under its contract with plaintiff, has repaid to plaintiff the sum of $69,500.00 of the sum expended by him. This is all of the evidence contained in the record relating to the original cost or the present value of the property devoted to the public use. The amount of plaintiff's expenditure, as stated, is disputed by defendants. In any event, the item of $12,687.04, designed "other expenditures" should be eliminated until the nature of this expenditure is made to appear. This should leave the amount claimed to have been so expended approximately $150,000.00, or about $10,000.00 per mile, for the cost

of preparing the roadbed and laying track, not including the cost of pile driving and of track material and equipping the road. In view of the character of the road and its territory, as developed by the evidence, this would seem ample for the whole work of construction. In any event, the plaintiff is not in the position to contend for more, since the records fail to show any other or greater expenditure by any one. The net earnings for 1912, eliminating the improper rental charge, would yield approximately 7½% (seven and one-half per cent) upon the plaintiff's corrected valuation of $150,000.00. These earnings are the result of plaintiff's own rate on logs. If the Commission's rates were substituted for the plaintiff's for the year 1912, and if no more business had been done for the year than was done under these rates, and if all business done for that year was the handling of the logs (and this seems to have substantially been the case), the gross earnings would be reduced from $15,553.01 to approximately $8,000.00, and deducting operating expenses ($4,296.20) that net operating income would be approximately $3,700.00. No showing is made on the record for taxes. This would be about 2½% on the assumed valuation of $150,000.00. The affidavits, however, tend to show that the voluntary rates of the plaintiff are prohibitive on all shippers upon the shipment of all classes of logs, except on hickory and white oak, and practically forbid the transportation of all classes of logs, except when cut from the lands of the plaintiff and shipped by his lumber company. The contention of the commission is that the plaintiff can afford to pay any rate, since there is a practical identity of interest between plaintiff, as lessee of the railroad, and plaintiff's incorporation as owner and shipper of the logs, so that the freight money would be taken by him from one pocket and put by him into the other.

The record shows that the Illinois Central Railroad Company voluntarily maintains rates on logs from Walls and Arden, stations on its lines, to Memphis, for like distance of fifteen miles, substantially the same in amount as those fixed by the Railroad Commission for plaintiff's railroad. The comparative rates on logs on other railroads in various sections of the United States, as shown by "Exhibit I" to the bill, are

higher, but conditions on those roads are not shown to be similar. No inference unfavorable to the Commission rates can, therefore, be drawn from the comparison.

If the Commission rates, when enforced, will yield the plaintiff no more than 2½% on his investment, it would seem that they are too low. The fact that they have yielded only that amount on the amount of business actually handled in 1912 under plaintiff's voluntary rates is, however, not conclusive. The defendant's contention that these rates were prohibitive as against all shippers except plaintiff or his incorporation, and that other timber land owners would cut and ship logs under the Railroad's Commission's rates, if they had a chance under such reduced rates, and would so greatly increase the volume of business transported as to make it remunerative under the lower rates, seems plausible. At least, it cannot be said in advance of a period of experiment under the lower rates that such would not be the case. If no business was developed by the lower rates, then if the plaintiff is, as alleged, the party most interested, in the incorporation that has heretofore cut and shipped the logs, no harm would be done plaintiff, since what he lost in operating the railroad, he would regain in the additional profit on the logging business, due to reduced rates. The interest of the plaintiff is both in the logging business and the railroad also impairs the value of the usual inference that the operator of the railroad would so operate it as to develop all the business that could be developed and would make the greatest possible profit. It is clear that the interest of the plaintiff in the railroad may be counterbalanced by his interest in the timber that he already owned, and that he may yet desire to acquire at lower figure obtainable because of its inaccessabilities to proper railroad facilities and rates. So it is true that the amount actually expended by plaintiff to build the railroad in this instance may be no true index of its fair value, since his timber interests may have induced him to build a railroad that could not be expected to be operated profitably as a purely transportation proposition.

It at least seems to us that it would be better not to interfere with the Commission made rates until the final hear-

ing, as this would afford a period for experiment as to their power to develop new business in volume sufficient to make the Commission rates remunerative, and in view of the fact that they failed to develop any new business, the loss of revenue to the plaintiff from the enforcement of the reduced rates, will be partly reimbursed to him in the additional profit, due to the reduced rates, the incorporation, which does the logging and shipping, and in which he seems to be largely interested, will make on its produce. Railroad Commission of Alabama vs. Central of Georgia Railroad Company, 170 Federal P. 225.

Additional gross earnings of about $5,000.00 with the same operating expense, would produce a net return of six per cent upon the present showing upon the valuation of $150,000.00 for the equipt railroad.

The unrebutted affidavit tends to show that the additional business could be transported without any additional train crew than those heretofore employed, and at a small additional operating expense. We think that there is no showing of confiscation as is required by the rate cases of Simpson vs. Sheppard and the other recently decided by the Supreme Court, to justify the Court's interference with the state made rates, at least upon the motion for a temporary injunction, and the application of the injunction pendente lite is denied.

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF MISSISSIPPI,
JACKSON DIVISION.

R. J. Darnell, Complainant

vs. No. 9.

Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, Composing the Railroad Commission of Mississippi, Defendants.

This cause coming on to be heard upon the application of the plaintiff herein for a temporary injunction, as prayed for in the bill of complaint, pending final hearing, and having been heard before the Hon. D. D. Shelby, Circuit Judge, the

Hons. H. C. Niles and W. I. Grubb, District Judges, sitting as the said District Court, and in pursuant of Section 266 of the Judicial code, and having been submitted upon the original bill and answer thereto and the affidavits filed in the cause by the respective parties, and upon oral arguments and briefs, and the court being of the opinion that the plaintiff is not entitled to the relief applied for by him.

It is ordered, adjudged and decreed that the application of the plaintiff on injunction pendente lite be and it is hereby denied and that the plaintiff be and he is hereby taxed with the cost of the application.

It is further ordered that this decree shall become effective upon the filing of the same in court.

Given this 10th day of November, 1913.

D. D. SHELBY,
Circuit Judge United States.
H. C. NILES, District Judge.
W. I. GRUBB, District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Plaintiff
vs. No. 9. In Equity.
George R. Edwards, et al.,

The Mississippi Railroad Commission, Defendants.

The following is a condensation of the testimony offered in evidence on the final hearing on June....., 1914.

The complainant's evidence to sustain his original bill was, in substance, as follows:

Elliott Lang, being produced and duly sworn, testified as follows:

My name is Elliott Lang; I live at Memphis, Tennessee, and am Auditor and Traffic Manager for R. J. Darnell, Lessee of the Batesville-Southwestern Railroad. My duties as Traffic Manager are to compile the tariffs and give instructions to Agents in cases where they do not understand the rules. My

duties as Auditor are to keep accounts, both of receipts and disbursements.

The construction of the Batesville-Southwestern Railroad started in about June, 1911. The actual construction of the road was paid for by R. J. Darnell, individually, the Illinois Central Railroad Company contributing towards the cost of construction at the rate of two thousand dollars per mile and in addition to that, furnished the rails, track fastenings, piling and furnished the steel span over Yocona River; also the Engineering work. The railroad begins at the town of Batesville, Mississippi, and extends in a Southwestern direction over a fraction of 17 miles to Yocona River and is being extended for a distance of one and a quarter miles south to the southern boundary of section 36, parallel with the northern boundary of Tallahatchie County.

Of my own knowledge, I am not thoroughly familiar with the general topography of the country through which the railroad passes. I have never been off the line of the road. The nature of the country through which the road goes and which I have seen from the road is, after the road gets eight miles from Batesville, it strikes the bottom land, subject to high water, more or less. The construction of the railroad was interfered with on numerous occasions because of the overflow washing out the dump, which dump varies from one foot to five or six feet in heighth. The railroad right of way is considered standard in all respects. I cannot tell how many bridges are on the road.

The cost of the construction of the road was paid for by R. J. Darnell, itemized, is taken from the books and compiled in accordance with the rules laid down by the Interstate Commerce Commission on Expenditures of Road and Equipment, Supplement No. 1, First Revised Edition, and is as follows, to-wit:

Right of Way		$ 4,466.31
Grading to Dec. 15, 1913	$59,035.04	
	197.96	59,233.00
Bridges, Trestles, Culverts	15,743.61	
	376.83	16,120.44

Ties	25,380.80	
Sold	1,017.75	24,363.95
Frogs and Switches		10.21
Ballast	37,169.25	
	630.84	37,800.09
Track Laying and Surf'n'g		15,470.28
Fencing Right of Way		613.25
Crossings and Signs		140.65
Tel. and Telephone Lines		169.51
Station Bldgs and Grounds		187.99
Shops, Engine Houses and Turntables		108.03
Shop Machinery and Tools		44.27
Water Stations		1,466.44
Miscellaneous Structures	6.00	
	1,453.95	1,459.95
Repair to Equipment		62.53
Injuries to Persons		732.93
Stationery and Printing		207.07
Other Expenditures		12,687.04
Cost of Roadway and Superstructures		$177,298.99
EQUIPMENT:		
Steam Locomotives	$10,867.36	
Work Equipment	1,315.13	
Passenger Equipment	1,650.30	
Freight Equipment	25.55	
		$ 13,858.34
Depreciation		$ 5,315.13
		$ 8,543.21
		$185,842.20
Cash Contributed by I. C. R. R. Co.		$ 39,540.00
		$146,302.20

There are no figures shown on the statement after May 1, 1913. The account from that date not being in shape yet. The item of $12,687.04 shown in the account as "Other Expenditures," is for Number 48 in the classification of the Interstate Commerce Commission and is as follows: "To this account is charged organization expenses, including payment of necessary fees, the cost of printing stocks and bonds; payments to Trustees, expenses of execution of the officers of the record, expenses of the various salaries and reports of general officers when read and also all items of a special and incidental nature which cannot be properly charged to any other account." To this account we were compelled to charge a great many items between the time the contract was entered into with the Illinois Central Railroad Company and R. J. Darnell, individually, and R. J. Darnell, Incorporated, on June 7, 1910, after the actual construction commenced and the items which were charged to this account were those which could not be charged to any other special account, for instance, salaries, printing, traveling expenses and other items of a general nature.

The contract of June 7th, 1910, between the Illinois Central Railroad Company, R. J. Darnell, Incorporated, and R. J. Darnell, individually, was the result of negotiations that took place between Mr. Darnell and the Illinois Central Railroad Company. The actual construction did not commence until a year later, and the road was in the course of construction until about the middle of June, 1914, or about three years after the construction was first started.

Up until quite recently, the only trains which were operated by Mr. Darnell over the road were construction trains, except in case where there was traffic in so much volume, then an engine would be run down and the freight brought in. Regular trains have only been operated for the past 60 days. The first freight that was carried for other people besides R. J. Darnell or R. J. Darnell, Incorporated, was in March, 1913.

When the road reached the point where the lessee was called upon to handle freight for other parties, I took the tariff of other short lines like ours and compared the rates

and undertook to fix the rates, except on logs. In securing the right of way, we found that there was some of the property which we could not get a right of way to except by condemnation proceedings, except by the terms laid down by the owners of the property, that we charge them not to exceed $2.50 per thousand feet for moving their logs into Batesville and when we made our rates on logs, we based our rates on that contract, which contract I make "Exhibit I" to my testimony.

The tariff which is "Exhibit F" to the original bill is a reprint of the original tariff which was established by me, the original tariff was tariff Number 1, I. C. C. No. 1, which the Interstate Commerce Commission required us to revise on account of some errors in the compilation of the tariff.

When the tariff was made up by me, I filed it with the Interstate Commerce Commission, but did not file a copy with the Mississippi Railroad Commission until called upon by the Secretary in May, 1913.

Mr. Darnell as Lessee of the Batesville-Southwestern Railroad operated the road under the tariff "Exhibit F" to the original bill on all shipments until September 10th, 1913, and is still operating under that tariff on interstate shipments.

The Railroad Commission of Mississippi, on July 23rd, 1913, materially reduced the rates on logs; the change or reduction by the Mississippi Railroad Commission affecting the rate on logs was this: we had been carrying a rate on logs for a distance of 10 miles and less of $2.85 per thousand feet; 15 miles and over 10 miles, $3.35 per thousand feet; 20 miles and over 15 miles, $3.85 per thousand feet. The Commission issued an order making the rates on oak, ash and hickory logs for 10 miles and less, $1.50 per thousand feet; 15 miles and over 10 miles, $1.75 per thousand feet; 20 miles and over 15 miles, $2.00 per thousand feet; on gum and all logs except oak, ash and hickory, it established a rate for 10 miles and less, $1.25 per thousand feet; 15 miles and over 10 miles, $1.50 per thousand feet; 20 miles and over 15 miles, $1.75 per thousand feet. The order of the Railroad Commission reducing the rates is "Exhibit H" to the original bill.

The rates which were charged by the road up to June 30, 1913, were the rates stated in I. C. C. No. 1 ("Exhibit F" to the original bill).

I have before me the original data of the report filed with the Mississippi Railroad Commission showing our earnings for the quarter ending June 30, 1913. This shows a net operating revenue of $6,112.28, while the net earnings of the road for that period was $3,563.21.

The operating revenue does not represent the net revenue by any means.

The gross operating revenue of the railroad for the time that the road first began operating up to June 30, 1913, is $13,284.74; the net operating revenue for that period was $9,397.39; this net operating revenue is a very large proportion of the gross operating revenue for the reason that while the road was under construction, we did not charge anything up against operating except such actual disbursements as we could locate the expense of, being merely incidentals, and we have often been able to handle traffic over the road without incurring any additional operating expense, during the construction period.

The construction of the road was charged up with full time of all expenses, except such time as actually given to freight operations, as nearly as we could locate it.

After the rates on logs which were fixed by the Mississippi Railroad Commission were put into effect for intra-state business on September 10, 1913, the net operating revenue for the nine months ending March 31, 1914, was $1,584.84, while the net revenue of the road shows a discrepancy for that nine months of $495.85.

During that nine months, the rate which was in effect on shipments of logs wholly within the state, was the rates shown on I. C. C. Tariff No. 1, that being the rate in effect until September 10, 1913, and after that time, the rates on logs ordered by the Mississippi Railroad Commission were in effect. The operating expenses of the road for the nine months ending March 31, 1914, was $8,663.04; that amount does not include the general expenses of the road. The total amount of the receipts, or earnings, of the road for that time was

$9,969.02. Of that amount, $5,375.31 were the earnings for the three months ending with September 30, 1913. The month of September is the month in which the Railroad Commission's rates were put into effect on intra-state shipments of logs. The amount of the earnings under the rate established by the Railroad Commission from September 30, 1913, to March 31, 1914, was $4,590.71. The railroad for the nine months mentioned lost something like $480.00.

After the rate which was established by the Railroad Commission of Mississippi was put into effect, there was no increase in the business of the road. There was quite a heavy movement in the report ending September 30, 1913, and then the movement fell off to nothing and picked up again in March, 1914. I took occasion to make comparison of the earnings from Acee and Mile Post 13 in 1914, figuring what we would have earned if the old rate established by us had been permitted to stand; what we actually earned under the rate established by the Railroad Commission and what we would have earned if the Railroad Commission had accepted our proposed rate, which was a rate of two cents per hundred weight for 10 miles and under; two and one-half cents per cwt. for 15 miles and over 10; 3c per cwt. for 20 miles and over 15. We hauled from Acee, in the month of March, 1914, 1,194,100 pounds of logs. Our earnings on that under the rate established by the Railroad Commission was $162.83. Under the rate we previously had in effect, our earnings would have been $284.04. At a rate of 2½ per cwt., we would have earned $242.08. From Mile Post 13, we hauled, in the month of March, 1914, 9,230,500 pounds of logs, on which, under the Railroad Commission's rate, we earned $1,415.10; under the rate which the Railroad Commission has not accepted yet of 2½c per cwt., we would have earned on this business, $2,342.62, which would have increased the earnings over the Commission rate of $972.52 and the deficit for the quarter ending March 31st, 1914, of $334.01 would have been changed to net earnings of $561.89.

The railroad is being operated by R. J. Darnell, individually; R. J. Darnell, Incorporated, has no interest in the road and has expended nothing in the maintenance and construc-

tion. R. J. Darnell, an individual, owns 10 shares of stock in R. J. Darnell, Incorporated. The amount of the capital stock of that Company is $100,000.00, divided into shares of a par value of $100.00 each. The stock holders in that corporation are the Estate of A. M. Love; R. J. Wiggs; R. H. Darnell; F. M. Darnell; R. M. Darnell; P. M. Darnell; R. J. Darnell and myself.

There is practically no freight handled by the railroad from Batesville to points on the railroad; all of the freight being hauled from points on the road into Batesville. Less than 2½% of the freight is hauled from Batesville to points on the railroad.

I have investigated the rates established by other railroads similar to this road and in effect on those other railroads in this State. I am only assuming that these rates are authorized by the Railroad Commission of Mississippi, from the fact that they are rates in effect on the roads mentioned.

The N. C. & M. R. R., Tariff I. C. C. No. 2, effective July 13, 1913, has a rate on logs, any distance, of $2.00 per thousand feet.

The Chicago, Memphis & Gulf Railroad, I. C. C. Tariff No. 51, publishes a rate for 6 miles or less of 1½c per cwt.; 10 miles and over 6, 2c per cwt.; 15 miles and over 10, 2½c per cwt.; 20 miles and over 15, 3½c per cwt.

Hackley Line, I. C. C. Tariff No. 3, carries two sets of rates on logs for distances under 15 miles and it has a rate of 2½c per cwt., with a minimum of 25,000 pounds per car and on its Bolivar Line, it makes a charge of 1-3/10c per cwt., with a minimum of 20,000 pounds per car. For 20 miles and over 15, it charges 3c per cwt., with a minimum of 20,000 pounds on its Hackley Line and on its Bolivar Line, for the same distance, a rate of 1-6/10c per cwt., for 20,000 pounds minimum.

Sardis & Delta Road, Tariff I. C. C. No. 2, charges 4c per cwt. for any distance.

The New Albany & Natchez Road, in Tariff I. C. C. No. 5, publishes a rate of 3c per cwt. with a minimum of 40,000 pounds for any distance under 20 miles.

The Liberty White Road publishes a rate of $10.00 per car on line logs for any distance, but does not publish any rates on hardwood logs.

The Illinois Central Railroad, in its Tariff I. C. C. No. 4581, applying on its Louisville Division, publishes a rate of 2½c per cwt. for 5 miles or less; 10 miles and over 5, 2½c per cwt.; 15 miles and over 10, 3c per cwt.; 20 miles and over 15, 3½c per cwt. The Illinois Central Railroad Tariff No. I. C. C. 4653, applying on the Y. & M. V. R. R. into Memphis, makes a rate of 1¾c per cwt. for 20 miles and over 15.

I have investigated the tariff on other roads than those mentioned, and I find that with the exception of the Y. & M. V. R. R., all of the rates charged by other railroads are higher than the rates on logs established for the Batesville-Southwestern Railroad by the Mississippi Railroad Commission.

CROSS-EXAMINATION.

I have been in the employ of R. J. Darnell and R. J. Darnell, Incorporated, eight and one-half years. My duties have gradually grown as the business increased. About thirteen years ago I was in the employ of the Louisville & Nashville Railroad in the capacity of Night Bill Clerk and afterwards as Freight Agent.

The Estate of A. M. Love owns one per cent of the capital stock of R. J. Darnell, Incorporated, Mr. Wiggs owns one per cent, I own one per cent and the balance of the stock is owned by the children of R. J. Darnell, but R. J. Darnell himself only owns one per cent.

The stock was transferred by R. J. Darnell to his sons at various times. I think some of it as long as five years ago. Last year, after R. J. Darnell, Incorporated, lost their mill by fire, Mr. Darnell notified me that he intended to transfer his entire holdings to his children. Practically all of the stock has been transferred by Mr. R. J. Darnell to the children since the Batesville-Southwestern Railroad was built and during the past year.

The mill of R. J. Darnell, Incorporated, in Memphis, was destroyed on June 15th, 1913. At that time it was in operation so far as possible, the operation depending on the log supply. At the time the mill in Memphis was destroyed, it

was entirely dependent upon the Batesville-Southwestern Railroad for the logs and that had been the case since about December, 1912. After the mill in Memphis was destroyed, plans for the construction of a mill at Batesville, Mississippi, were almost immediately laid and that mill was placed in operation on March 17, 1914. From June, 1913, to March, 1914, the R. J. Darnell, Incorporated, mill was not running and during that period of time, R. J. Darnell, individually, and R. J. Darnell, Incorporated, were not shipping any logs over the Batesville-Southwestern Railroad for themselves, except such logs as they had on hand at the time they lost the mill in Memphis, about one million feet.

I did not bring the books of the Railroad Company which would show the amount of logs that were shipped by R. J. Darnell, Incorporated, over the railroad and could not say from memory exactly how many, but I think about one million feet.

The R. J. Darnell, Incorporated, mill at Batesville received practically all the logs shipped over the railroad since March, 1914.

The timber land from which the timber belonging to R. J. Darnell, Incorporated, comes, belongs to R. J. Darnell, individually, who is the lessee of the Batesville-Southwestern Railroad, and practically all of the timber from those lands are shipped and delivered to R. J. Darnell, Incorporated, at Batesville. I do not keep statistics showing the amount of logs which have been shipped by persons other than R. J. Darnell, Incorporated, over the road. There was a shipment on the track yesterday at Batesville for the Woods Lumber Company, that moved from Acee, consisting of eight cars. We have several other shipments. I do not know who they were for. There were a lot of logs lying along the railroad for a considerable time that the railroad would not carry because they were to be shipped to inter-state points and the road demanded the inter-state rate. We never decline to receive any logs which were destined to points within the State of Mississippi, but we would not allow any party to ship logs over the Batesville-Southwestern Railroad to Batesville and rebill them there to points without the State unless the parties

would pay the rate which had been established by us and which was in effect on inter-state business.

There were some logs carried to Batesville for a Mr. Price and these logs were included in the comparison made by me when I stated what had been lost under the rate established by the Railroad Commission of Mississippi. I do not know exactly how many cars there were shipped. Practically all of the freight of logs and lumber that have been carried out since the Railroad Commission attempted to fix a tariff for the road has been logs that were carried out and delivered from the Darnell land to the Darnell, Incorporated, mill at Batesville and practically all of the losses came from the freight shipped from the Darnell land to the Darnell, Incorporated, mill. There has been a falling off of the earnings and consequently a falling off of the tariff since the Railroad Commission of Mississippi undertook to fix rates.

The Darnell, Incorporated, mill, since its construction at Batesville, has been running on about one-half capacity because it is a new mill. I do not think that the individual owners of land would get out a great deal more of timber if a lower freight rate than the one established by us was put into effect on the road. This, however, is only a presumption. I do know that they will ship logs, provided they can get the rate they want; otherwise, they wont.

I have been over the line of railroad; it is comparatively straight; only about two slight curves. There is only one grade. It is not possible to carry a load of logs and lumber over the road that the Illinois Central can handle with a larger engine. When we have the business on the road to justify it, we generally run from ten to fifteen cars to the engine, maybe a little more or a little less, but that is the best I know.

This railroad was built under a contract between the Illinois Central Railroad Company and R. J. Darnell and R. J. Darnell, Incorporated, which is "Exhibit A" to the original bill. After that contract was entered into, the Batesville-Southwestern Railroad Company was incorporated. I have never seen the charter and immediately, or shortly after the construction of the road, it was leased to R. J. Darnell. There

was no formal lease between the Batesville-Southwestern Railroad Company and R. J. Darnell. There was never any application made to the Mississippi Railroad Commission by R. J. Darnell to make that lease. While the mill of R. J. Darnell, Incorporated, was not in operation, the volume of traffic over the Batesville-Southwestern Railroad was not as great as it was while the mill was in operation, but we maintained such part of a train crew as was necessary all of the time. We have only one through train on the road a day. This was continued during all that time.

The statement shows that there was $4,466.31 paid for right of way, part of that was paid in Attorneys' fees, part for salaries incurred in getting up the right of way. I think $150.00 was paid to Mr. Pinson. Part of it in examining title of land of the right of way. Part to the Coe Estate and other parties that I haven't the names of with me, but could furnish.

An item of $37,000.00 for ballasting the road represents the amount that was paid to C. B. Vance and the Batesville Gravel Company for ballast and includes not only the cost of the gravel but the cost of spreading it on the tracks. Under our contract with the Illinois Central Railroad Company, we were required to make monthly reports of the expenses incurred in the construction of the railroad and we did that. Those reports show that the construction cost, as stated, $146,302.20, is correct and they are made "Exhibits 2" to this testimony. The latest date shown on those reports is December 15th, 1913.

I do not know whether the rates on other railroads which have been testified to by me in my direct examination have been passed on by the Mississippi Railroad Commission or not, but I know that those rates are in force and effect.

The average load per car on the Batesville-Southwestern Railroad is somewhere between four and four thousand five hundred feet. Some people load as low as three thousand feet. I have had occasion to check for runs from three thousand seven hundred feet up to five thousand two hundred feet, but the general average is from four thousand five hundred to four thousand six hundred feet. It is true that what would be a reasonable or unreasonable rate on a railroad line would

depend somewhat upon conditions, the amount of tonnage that could be hauled over it and the amount of the expenses that would reasonably be incurred in the moving of that tonnage.

The terminus of the road is about twelve miles from Charleston, Mississippi and is through practically a timber country all of the way.

R. J. Darnell, individually, owns about eighteen thousand acres of timber land accessible to the railroad. I do not know what amount is owned by outside individuals, between the southern terminus of the road and Batesville, Mississippi.

I do not own any stock in the Batesville-Southwestern Railroad Company. I do not know who is president; Mr. Park is vice president and is also vice president of the Illinois Central Railroad Company. I do not know who the directors are. Mr. Darnell is not president and not a director that I know of. I do not know who the officials are or who controls the stock, or who owns the stock. I do not consider Mr. Darnell the owner of the Batesville-Southwestern Railroad; my information is he is the lessee of the road, under that contract of June 7th, 1910. Mr. Darnell, Lessee of the Batesville-Southwestern Railroad, has no joint rate with the Illinois Central Railroad into Memphis, or any other point. I applied for one to Mr. Hattendorf, the General Freight Agent of the Illinois Central Railroad at Memphis, and have had the matter up with him at various times during the past year. I have never applied to the Railroad Commission of Mississippi for any joint rates with the Illinois Central. I simply had the matter under discussion with Mr. Hattendorf. The rate on logs over the Illinois Central Railroad from Batesville, Mississippi to Memphis, Tennessee, is four and one-half cents per cwt.; with a three-quarter cent refund. From Acee to Memphis, it would be about a seven cent rate, Acee being a point on the Batesville-Southwestern Railroad. Per thousand feet, the rate would be about $7.00 per thousand feet from Acee to Memphis, Tennessee. Logs figure eleven pounds to a foot. I do not know what it would cost to move a ton of freight a mile over this railroad, that would depend entirely upon the density of the traffic and the cost of maintenance. I have never applied to the Interstate Commerce Commission for a joint

rate from points on the Batesville-Southwestern Railroad over the Illinois Central Railroad into Memphis, Tennessee.

This agreement entered into this the 4th day of May, 1911, by and between R. J. Darnell and R. J. Darnell, Incorporated, of Shelby County, State of Tennessee, party of the first part, and C. L. Sivley, of Chicago, State of Illinois, and James Stone of Oxford, State of Mississippi, parties of the second part. Witnesseth:

The Batesville-Southwestern Railroad Company is chartered under the laws of the State of Mississippi for the purpose of running a line of Railroad from Batesville, Mississippi in the direction of Charleston, Mississippi, and the parties of the first part are under obligations to procure for said railroad company a right of way which is now located on and runs through and over the lands of the parties of the second part in Panola County, the State of Mississippi, and an agreement having now been reached between the parties hereto.

Now, therefore, in consideration of the conveyance by the parties of the second part of a right of way for said Batesville-Southwestern Railroad Company through their said lands, set out in deed made by them, of even date herewith, to said Railroad Company, and to provide for the transportation of the logs cut from the land described in said deed, of the lumber manufactured therefrom, the parties of the first part hereby contract and agree with the parties of the second part, as follows, to-wit:

1. The parties of the first part have agreed to operate said Batesville-Southwestern Railroad, and so long as they, or their vendees, shall continue to operate said road, they will grant and provide for the parties of the second part switches not to exceed two (2) in number, with the privilege of relocating same as necessities may demand, said switches to be located either on the railroad right of way or on the lands of the parties of the second part, to enable them, or their vendees to load logs, lumber, etc., from their said lands, provided the material necessary for such switches can be leased from the Illinois Central Railroad Co., or, if the parties of the second part, or their vendees, prefer they can make their own

arrangement for supplying such material as the parties of the second part shall pay such rentals on such material as the parties of the first part may have to pay the Illinois Central Railroad Company for such material, and such switches shall be constructed and maintained by the parties of the second part at their own expense, including the maintenance of switch lights. If such switches shall be constructed by the parties of the first part, the actual expenses of such constructions shall be paid by the second parties. Whether the said switches are constructed by the parties of the first part or by the parties of the second part, all material necessary for their construction will be transported free of charge from Batesville to the place of location by the parties of the first part. In case any tram road or roads shall be needed for the transportation of the logs or lumber to be cut or manufactured from the lands now owned by the parties of the second part, the parties of the second part shall have the privilege of connecting same with the switch track or main line of the Batesville-Southwestern Railroad at some convenient place on the lands of the parties of the second part, but materials for the construction of such tram road, or roads, shall be transported free of charge by said Batesville-Southwestern Railroad Company over its line.

2. The parties of the first part shall furnish to the parties of the second part, or their vendees, all necessary cars to be furnished by the Illinois Central Railroad Company, suitable for the shipment of logs and lumber, said cars to be furnished promptly upon five (5) days notice to the parties of the first part, when needed. In case sufficient Illinois Central cars can not be had for the carrying on of the business of the parties of the first part and the parties of the second part, or their vendees conjointly, then such cars as can be obtained shall be rateably distributed between the parties hereto. In the event the parties of the first part are unable, at any time, to obtain suitable cars from the Illinois Central Railroad Company, this shall be sufficient excuse to relieve parties of the first part from breaching this contract; otherwise, the obligations to furnish cars necessary shall be in full force.

3. The parties of the first part agree when five (5) days notice is given, that they shall load all logs of the parties of the second part, or their vendees, distributed, along the

right of way of said railroad company, onto the cars so furnished by the Illinois Central Railroad Company, at and for the price of one dollar ($1.00) per thousand feet, said cars to be loaded in a proper manner, as required by the railroad company, except that should the Illinois Central Railroad Company require the logs to be wired such wiring shall be done by the parties of the second part, or their vendees, or if done by the parties of the first part, then it shall be at the expense of the second parties, or their vendees. In placing said logs for loading, same shall be done, by the parties of the second part, at convenient places along the right of way and within sixty (60) feet of the track. It being understood and agreed, however, that the parties of the first part shall not be called upon to load logs in lots of less than ten (10) car loads at any one time, except in cases of emergency where the logs to be loaded are liable to be damaged.

4. The parties of the first part agree to deliver the cars aforesaid, and when loaded to transport them to Batesville, Mississippi, and deliver them at the proper place or upon a transfer track so that they can be delivered for transportation by the Illinois Central Railroad Company, without the necessity of transferring said logs from the cars upon which they are brought into Batesville, and upon a freight rate from the point of shipment to Batesville not exceeding $2.50 per thousand feet for logs and $3.00 per thousand feet for lumber; it being understood, however, that the parties of the second part are not to pay a higher rate than that charged any one else for the same service. Settlement of freight charges shall be made whenever damaged by the Batesville-Southwestern Railroad Company on delivery at Batesville.

5. This contract is entered into upon the part of the parties of the first part for themselves, their vendees and assigns, and is for the benefits of the parties of the second part, their vendees and assigns.

Witness the hand of the parties this the 4th day of May, 1911.

(Signed)

R. J. DARNELL,
R. J. DARNELL, Inc.,
C. L. SIVLEY,
JAMES STONE.

Following appears on back:

R. J. Darnell vs. Geo. R. Edwards, et als. Exhibit A to Testimony R. J. Darnell.

Mr. W. L. Park:

My name is W. L. Park; I live in Chicago, Illinois; am vice president in operation and construction of the Illinois Central Railroad Company; my duties are to generally supervise the operation and construction of the railroad; I have been in this position for four years. I am vice president of the Batesville-Southwestern Railroad; C. H. Markham, President of the Illinois Central Railroad Company, is President of that road.

In March, 1910, the Chief Engineer of the Illinois Central Railroad Company, Mr. Baldwin, brought to my attention the construction of the Batesville-Southwestern Railroad Company and, after several conferences with the President of the Illinois Central Railroad Company and with the Board of Directors, it was finally decided by the Illinois Central Railroad Company to go into the proposition and on June 7th, 1910, a contract was entered into between the Illinois Central Railroad Company and R. J. Darnell, individual, and R. J. Darnell, Incorporated, which is "Exhibit A" to the original bill in the case, and which was supplemented by contracts of June 21st, 1911, and July 6th, 1912, which are "Exhibits B and C" to the original bill.

I know that the railroad was built in accordance with the contracts entered into and referred to. All of the incorporators of the Batesville-Southwestern Railroad Company were connected with the Illinois Central Railroad Company in some capacity.

I have been on the Board of Directors of the Batesville-Southwestern Railroad Company since its organization and the only contracts entered into by that railroad are the contracts which are exhibits to the original bill in this cause and in evidence. Approximately $100,000.00 has been contributed towards the cost of building the railroad by the Illinois Central Railroad Company. The Batesville-Southwestern Rail-

road Company was organized as a corporation for the purpose of satisfying the laws of Mississippi. The reason that actuated the Illinois Central Railroad Company in making the contract with Mr. Darnell was because it was shown to the Illinois Central Railroad Company that it was a business proposition for them to enter into that contract. There was no agreement between Darnell and the Illinois Central Railroad Company which is not embodied in the contracts which are in evidence.

CROSS-EXAMINATION.

The Mississippi Valley Corporation owns ninety-six shares of stock in the Batesville-Southwestern Railroad Company; I own one; Mr. Lee owns one; Mr. Bleauvelt owns one and Mr. Markham owns one. I do not know who are the stockholders of the Mississippi Valley Corporation, nor do I know its relation to the Illinois Central Railroad Company.

Mr. A. S. Baldwin:

My name is A. S. Baldwin; I live in Chicago, Illinois, and am Chief Engineer of the Illinois Central Railroad Company and have been for about nine years. The Batesville-Southwestern Railroad was located under my supervision. I have been over the line once. The construction of that road was paid for by R. J. Darnell or R. J. Darnell, Incorporated. The Illinois Central Railroad Company contributed $98,000.00 towards the construction of it. Mr. Darnell paid for construction, according to our books, $141,000.00. The total cost was $239,000.00; there has not been a final account between Mr. Darnell and the Illinois Central Railroad Company and a final account may make some alteration, but that is near the cost. I prepared the draft of the contracts between R. J. Darnell, Incorporated, and R. J. Darnell, individually, and the Illinois Central Railroad Company, which are in evidence. Mr. Darnell has complied with those contracts up to date to the best of my knowledge and belief. The engineering of the Batesville-Southwestern Railroad has been done under my supervision. The Illinois Central Railroad Company has carried out its part of the contracts up to date. The Batesville-Southwestern Railroad Company was constructed under the contracts which are in evidence and those contracts were the re-

sult of negotiations between Mr. Darnell and the officials of the Railroad Company, the Illinois Central Railroad Company executed that contract because it was thought by the officials of that road that they could, at some time, use the road. The country through which the railroad passes is for about seven miles from Batesville, through the hill section of the country; then, it goes into the Delta and the road is on fills, averaging from two to three feet from the surface of the country. Some of the hills are as high as four to six feet. There are several small trestles and one steel bridge over Yocona River, about one hundred feet long. The railroad runs about two miles south from Yocona River. At a point on the road about seven or eight miles from Batesville, all of the balance of the railroad is subject to overflow from Yocona River and Tallahatchie River.

CROSS-EXAMINATION.

I do not know how many switches are on the road and have never had any applications for laying of switches. There were not any stations on the railroad in December, 1913; the railroad becomes the property of the Illinois Central Railroad Company at the end of twenty years. The Illinois Central Railroad Company has nothing to do with the management of the Batesville-Southwestern Railroad, although the directors are the same, so far as I know. I think there was a side track constructed at the station for shipments other than Darnell's. When I went over the railroad, there were seventeen miles of track. The side track was located at the beginning of the timber section. The Illinois Central Railroad Company paid $2,000.00 per mile, as provided for in the contract, and furnished a great deal of material, as provided in that contract.
Mr. R. J. Darnell:

My name is R. J. Darnell; I am the complainant in this suit; I live at Memphis, Tennessee, and am the same person mentioned as Lessee of the Batesville-Southwestern Railroad in the contracts exhibited in evidence. There were never any other agreements entered into between myself or between R. J. Darnell, Incorporated, and the Illinois Central Railroad Company, either verbal or written. I have, individually, spent

in the construction of the Batesville-Southwestern Railroad, $146,000.00. None of that amount has been repaid to me by anybody. The Illinois Central Railroad Company paid $2,000.00 a mile under their contract, but that $2,000.00 per mile is not included in the $146,000.00 that I have paid out individually. R. J. Darnell, Incorporated, has nothing whatever to do with the railroad. The reason that they were included in the contracts which are in evidence was this: In our talk of making a contract, the question came up as to the Illinois Central Railroad getting the output of timber cut off the lands and the timber cut by R. J. Darnell, Incorporated, and they insisted on having their names in the contract so as to insure them the handling of the output of the mill. R. J. Darnell, Incorporated, has never expended a cent in the construction or maintenance of the Batesville-Southwestern Railroad. It is a milling concern, manufacturing and handling lumber and is chartered under the laws of the State of Tennessee, with its domicile at Memphis, Tennessee. I owned the principal part of the stock. It is now owned by Lang, one percent; Wiggs, one percent; Love, one percent; I own one percent. The bulk of it belongs to my sons. I am President of R. J. Darnell, Incorporated. I have sold the timber on the lands owned by me in Panola, Tate and Quitman Counties to R. J. Darnell, Incorporated. They are to cut it, have it hauled and loaded on the cars and pay me so much per stump. I do not know exactly what the price they are to pay me is and haven't the contract with me. The R. J. Darnell, Incorporated, operate a mill at Batesville, Mississippi. I have no interest in that mill except my one per cent of the capital stock in that corporation. The Illinois Central Railroad Company has no interest in the Batesville-Southwestern Railroad except as mentioned in the contracts. I own about nineteen thousand acres of timber land accessible to the Batesville-Southwestern Railroad and the timber on that land has been sold to R. J. Darnell, Incorporated, at so much per stump, as stated. This land is well timbered with oak, gum and hickory timber and most of it is virgin timber. The operation of the railroad is in the hands of Mr. Lang; I have been over the railroad many times and am thoroughly familiar with it. It runs from Batesville for

about eight miles, through the hill section, and then into the low lands and these low lands are subject to overflow for about seven or eight miles through which the railroad runs. The track is overflowed sometimes after very heavy rains for a considerable period of time. The track has been washed away three or four times in the last twelve months. I am in Batesville for two or three days every week and have been for the last three or four years. The timber land owned by me is about twelve miles from Batesville. The only traffic over the road is timber and logs which are shipped into Batesville. There is practically no outgoing traffic, sometimes a small amount of groceries and supplies. The country through which the railroad runs is not thickly settled. I am acquainted with the market value of the land owned by me and after the merchantable timber has been cut off, the land would not be worth over $10.00 per acre and that is a fair cash market value for it. The overflow from Yocona and Tallahatchie Rivers down near the mouth of Yocona River, gets as deep as eight or ten feet. Up near the railroad, it gets as deep as from one to three or four feet. About one-half of the land owned by me would be free from overflow.

CROSS-EXAMINATION.

The country from Batesville to Acee, the first station on the road, is a settled country and the railroad passes through farms from Batesville to Acee and a short way below. The road does not strike the timber country until it comes very close to my holdings. From Acee on to Yocona River, the country is all timber land. A great deal of the timber is not merchantable timber, but is wood land. I own a belt of timber south of Yocona River, up and down the River. My lands lie nearly seven miles south of the Yocona River. I own solidly south of Yocona River for a strip of about six or seven miles in width in some places and one place, two miles. I have sold the timber on the land owned by me to R. J. Darnell, Incorporated, at so much per stump. I do not know at this time what the price per thousand is. I could furnish you with that amount later if you desire to have it. The contract with R. J. Darnell, Incorporated, embraces the entire output of tim-

ber on the land. The contract was made about eight months ago, just after the Memphis mill burned and before the building of the new mill at Batesville. We have a bungalow station shed at Acee and are contemplating building a station just across Yocona River. Acee is not on the land owned by me. The terminus of the road at Yocona is on the land owned by me. The railroad has a well and pump house at Batesville, nearly a mile south of the town. This pump house at Batesville is located at the mill. The Batesville-Southwestern Railroad Company does not operate the railroad, I operate the railroad. The item of water stations charged on the account which has been testified to by Mr. Lang of $1,446.44, is for a water station located about a mile south of Batesville. That is the only water station located on the road. This water station was located where it is now before the mill was built at Batesville and is not used by the mill. After the mill burned in Memphis and before the mill was built in Batesville, R. J. Darnell, Incorporated, shipped over the Batesville-Southwestern Railroad about 1,500,000 feet of logs. The mill in Batesville began running in the latter part of March or the first of April, 1914; only a limited amount of timber was shipped from the lands owned by me accessible to the railroad from the time the mill burned in Memphis until the latter part of March, 1914. Quite a considerable amount was shipped during that time by individual land owners, I cannot state exactly how much. I suppose about one hundred and fifty or two hundred thousand feet was shipped by parties owning logs on the side of the road this side of Tucker's. I would judge that the entire amount shipped by other parties during that time would be between one million and two million feet. The road has not been doing as much business since the Darnell, Incorporated, mill has been out of operation as it would have had that mill been in operation. The capacity of the Darnell, Incorporated, mill at Batesville is from seventeen to twenty million feet a year. Batesville is 61 miles south of Memphis. Memphis is the principal hard wood timber market in the South and has a number of mills and receives logs and timber from all over the country, Arkansas, Mississippi, Tennessee and Alabama. The freight rate from Batesville to Memphis

on logs is 4½c per cwt., with a ¾c refund to the shipper. All of the matters of rates on the Batesville-Southwestern Railroad are handled by Mr. Lang. I do not know anything about that. At present, we are shipping over the railroad about thirty-five or forty thousand feet of logs a day; the mill at Batesville is not being run at full time. I could not say what amount of logs are being shipped by other parties over the railroad. The Darnell, Incorporated, is shipping its logs from between thirteen and fifteen miles down the road from Batesville. The logs that are shipped by it are oak, gum and elm. I am not president of the Batesville-Southwestern Railroad Company, but am lessee. Mr. Markham is president; I do not own any stock in that railroad. I do not know who does own it; I do not know who are the directors. I hold the Batesville-Southwestern Railroad and am operating it under a contract with the Illinois Central Railroad Company which is in evidence and under that contract, I am to build the road and operate it for twenty years. Unless it is embodied in the contracts which are in evidence, I have no contract with the Batesville-Southwestern Railroad Company. I am Second Vice President of the Batesville-Southwestern Railroad Company, but am not a director. I do not know what the capital stock of the Company is. I have been in the timber business about thirty years. The best price for quarter sawed number one red gum is about $40.00 per thousand. I have never received over $42.00 per thousand.

RE-DIRECT EXAMINATION.

There is very little difference in the weight of oak and gum timber. I would estimate that the amount of timber to be shipped from the country which is within reach of the railroad is about one hundred and fifty to one hundred and sixty million feet. About one hundred and ten or one hundred and twenty million of that amount is timber on the lands owned by me.

CONDENSATION OF THE EVIDENCE OFFERED BY THE DEFENDANT ON THE HEARING.

Defendants introduced as evidence the testimony of the following witnesses:

J. H. Hines:

My name is J. H. Hines; I live at Memphis, Tennessee; I have had experience in operating logging roads and know something of the expenses in operation and maintenance of them and have operated logging roads and saw mills. I am pretty well acquainted with the country running from Batesville, Mississippi, to the Yocona River and with the railroad known as the Batesville-Southwestern Railroad. I would estimate that that railroad could handle on an average about one hundred thousand feet of logs per day, or approximately thirty million feet per year. That to maintain this road, there would have to be a train crew, section crew and replacement of ties at a probable cost $50.00 per day, to operate the train crew, including coal and $25.00 for section crew; probably you would have to replace a mile or two miles of ties annually, six hundred ties probably, at fifty cents apiece; $500.00 for over-head expenses; that would amount to about $25,000.00 for handling thirty million feet of logs per year and keeping up the road; at a rate of $1.50 per thousand feet, I estimate that the road would, if it handled the amount of timber mentioned by me and cost was no more than mentioned by me, would receive, at the end of a year, a profit of $15,000.00. At a rate of $1.75 per thousand feet, the profit would be $22,500.

CROSS-EXAMINATION.

The figures given by me are merely speculative based on my experience; I do not know what the cost of maintenance would be, but Mr. Darnell has a fine road bed and the maintenance cost would be less than on a cheaper constructed road. I have had no experience with a road constructed like this one is. The roads that I have had experience with are ordinary logging roads. In making this estimate, I have made no allowance at all for interest on the investment. An oak log is heavier than a gum log and you can not get as many feet of

oak logs on a car as you can of gum, but there is not much difference in the cost of handling the two kinds. It will cost practically as much to handle one as it does the other. The name of the firm that I am connected with is Hines Lumber Company. This Company operates a logging road at Trezevant, Tennessee, three miles long, and at Bobo, Mississippi, three miles. These two roads are nothing like Mr. Darnell's road.

J. G. Neudorfer:

My name is J. G. Neudorfer; I have been engaged in the railroad business about thirty years, in the capacity of Engineer, Master Mechanic and Superintendent. I was Superintendent of this division of the Illinois Central at the time that the Batesville-Southwestern R. R. was first started. The expenses of operating a train crew a day is about fifty-three or fifty-four cts. per mile. That includes the cost of operating the locomotive, fuel, repairs, etc.; the services of train and engine crew. On a railroad track where there is scarcely no grade and comparatively straight, for about fifteen miles, the amount of logs that a train crew on that road could move a day would be about two hundred thousand feet. A train crew could make two round trips a day. If a road had that volume of business, on a freight rate of $1.50 per thousand feet, a train crew could earn, in bringing out logs, above operating expenses, a day, $230.00. A reasonable estimate of the up-keep of a new railroad is about $40.00 to $80.00 per mile per month. I have never been over the Batesville-Southwestern Railroad. From what I can hear of this road, I believe that $200.00 per annum would be a sufficient amount for up-keep of the road bed.

CROSS-EXAMINATION.

That $200.00 per annum includes the cost of tie renewal, keeping up the road; does not include Superintendent's salary, Traffic Manager's salary; does include the salary of the section foreman and different section crews. I have never been over the railroad; do not know anything about the line except from information.

C. O. LOVE:

My name is C. O. Love; I live at Charleston, Mississippi, and am Superintendent of the Lamb-Fish Lumber Company, which is one of the largest hardwood mills in the country. We have a traffic arrangement with the Yazoo & Mississippi Valley Railroad Company, and under that arrangement we haul our logs from the woods over their main line to the saw mill by paying for a portion of the up-keep of the road and furnishing our engine and cars, over a distance of twelve miles. The cost to the Lamb-Fish Lumber Company under that arrangement to ship its logs to its saw mill is about $1.30 per thousand feet. Under that arrangement, the Yazoo & Mississippi Valley Railroad Company furnishes the road bed, we furnish the crew, engine, etc., and are assessed our proportionate part of the up-keep of the road.

CROSS-EXAMINATION.

We own some roads that are not connected with the Yazoo & Mississippi Valley Railroad; the cost of up-keep of those roads vary. We own two roads, one of them two miles in length and one about twelve miles and both are standard guage roads, but the tracks are not ballasted. I have no idea what it costs to handle logs on these roads to our mill. The cost of handling logs over these roads is more than the cost of handling logs over the Yazoo & Mississippi Valley, because we figure in for the construction as a part of the cost. The amount figured in for the construction of the road is seventy-five cents per thousand feet and the total cost per thousand feet over these roads is $2.10 per thousand.

Capt. C. B. Vance:

My name is C. B. Vance; I live at Batesville, Mississippi; I own one thousand and forty acres of timber land adjacent to the Darnell railroad. I have tried to dispose of the land, or timber owned by me and parties I have negotiated with and attempted to negotiat[illegible] sale with, have made great objections to the purchase of the same on account of what they considered excessive rates. My land is situated about ten or twelve miles from Batesville. I am familiar with the country

through which the railroad passes and from Batesville to Acee, the country is very good farming country and is a level country and goes into the bottom gradually. There is a slight grade where it comes into the bottom. I have been over the road and find it to be a good road, well ballasted and generally well built. I should think that the road could handle very heavy freight trains over it and that it could handle all of the freight that would come to it. I believe that if the rate established by the Railroad Commission of Mississippi were put into effect, there would be an increase in the timber traffic over the road and that increase would be a considerable increase. I think that the rate fixed by the Railroad Commission is reasonable. I leased the gravel pit owned by me to R. J. Darnell and he paid me three and one-half cents per yard royalty for the gravel taken from it.

CROSS-EXAMINATION.

The railroad runs through one corner of my lands and parallel for a mile or more, two hundred feet off. Before the railroad was built, I never offered any of my timber for sale, and I have not been able to sell any of the timber since the railroad was built because of the rate.

J. H. Boyles:

My name is J. H. Boyles; I live at Batesville, Mississippi, and am acquainted with the country southwest of Batesville through which the Batesville-Southwestern Railroad runs. I have lived near that country all of my life and near the bottom land through which that railroad runs. I was born and raised ten miles southwest of Batesville. After the railroad leaves Acee, south, all of the country is practically timber land except the land immediately under the bluff is in cultivation. I have been engaged in the logging business for twenty or thirty years. There are about six or seven thousand acres of land not owned by Darnell or by Darnell, Incorporated, accessible to the railroad and north of Yocona River. There are about ten thousand acres south of Yocona River accessible to the railroad. In all, including the Darnell holdings, there are from thirty to thirty-six thousand acres of tim-

ber. I think the railroad pulls from twenty to twenty-five loaded cars or less in a train. About five thousand feet can be loaded to a car. I know what it costs to handle and ship timber. The rate fixed by the Railroad Commission is $1.50 per thousand feet for anything under ten miles and in my opinion it is a reasonable rate. I base this opinion on what other roads charge. I believe if the Railroad Commission's rate were put into effect on all timber shipped over the railroad, there would be an increase in the timber that was shipped.

CROSS-EXAMINATION.

I ship my timber in various amounts at various times. I own about three or four hundred acres of land accessible to the railroad.

T. F. Griffith:

My name is T. F. Griffith; I live at Batesville, Mississippi, and am engaged in the log business about twelve miles from Batesville on the Batesville-Southwestern Railroad at Mims' Spur. Mr. Mims and I are in partnership and started the complaint before the Mississippi Railroad Commission. When we started in business there and tried to ship logs, we found the rate to be prohibitive. It was $3.90 per thousand feet twelve miles from Batesville from our holdings, and I appealed to the Railroad Commission and after some time, say four or five months, they reduced it down on logs to $1.75 for oak and $1.50 for gum. We then ceased to ship logs and commenced to manufacture lumber and appealed to them for a lumber rate, as the lumber rate was $3.35 per thousand feet for lumber and we finally succeeded in having a two cent rate for our lumber and we had been waiting for seven or eight months. I know several parties who have timber that would be moved if the Railroad Commission's rate would be put into effect on all timber. I have been in the lumber and log business for about nine or ten years in Arkansas, Tennessee and Mississippi, and I have never seen a higher rate than the one fixed by the Traffic Manager of R. J. Darnell and a railroad better adapted than this one for hauling. I consider the rate fixed by the Railroad Commission as reasonable. This opinion is

based upon a comparison made by me with other rates on other railroads. I think that if a more reasonable rate were put into effect, the road would do more business than it does. I have seen as many as twenty car loads of logs hauled over the road in one train and I think it could easily handle one hundred thousand feet a day. I am not familiar with the operating expenses of the railroad, but I think they can easily haul twenty loads or more; they have no grades or curves and have one of the finest road beds that I have ever seen. They have a station at Acee and at our place, at Mims' Spur. and Mile Post 13 they have a switch; they haven't any station house but at Acee, they have an improvised building with no sides, just a top that cost about $150.00 to build.

CROSS-EXAMINATION.

The outgoing freight could be carried in less than one car every day. The roads that I am familiar with are standard roads and not tap lines. I do not know what it would cost to operate this railroad annually. We ship most of our oak timber out and the reason that the gum was not shipped was because business was bad. The price on gum and all other timber is, at this time, very low. I do not know what it cost to build the railroad nor to maintain it. My observation is that there is very little up-keep as far as section work is concerned and replacing ties. I do not know what salary is paid to the officials, but know that they need officials to operate a railroad.

Mr. M. H. Mims:

My name is M. H. Mims; I have had about fifteen years experience in the log and lumber business. That experience has been in Tennessee up to three years ago. I went down into the bottom and bought a tract of timber and I sold the logs to a Memphis Company. They took the Illinois Central rate from Memphis to Batesville, but they would not touch the other rate until I had a contract with them and stood for a part of the rates myself. I found I could not get this rate lessened from the rebate that was to come to me and still stand the rate. The railroad has a mighty pretty road bed.

with very little grade and it requires less to pull out a load than any other road I ever saw. I am not an engineer nor a railroad man, so do not know much about it. In my opinion, the rate fixed by the Mississippi Railroad Commission is a reasonable rate and the railroad could make a very good profit on it. When I went into this matter, I got the tariffs of different roads in the different states and I got a little information along that line and from what I gathered from that, I think they can make a handsome profit on the rate as fixed by the Mississippi Railroad Commission. Gum timber is lighter than other timber and can be handled easier and can be cut and hauled cheaper because it is more uniform in size and can be handled better in every other way. In other words, where it would cost one dollar to cut oak, you can get gum out for seventy-five cents. The general custom with railroads is to charge a cheaper rate for gum than for other timber. Gum weighs three pounds per foot. Three hundred pounds per hundred feet. Oak weighs four pounds per foot.

CROSS-EXAMINATION.

When I stated that I had made an investigation of rates and that there was a difference in rates in gum and other timber, I meant to state gum lumber and other lumber. I had made no investigation on logs. All of the investigation that I have made has been about lumber and not logs. I do not know what the cost of construction of the Batesville-Southwestern Railroad was. It is a standard guage road and best in grade and best in construction. When I testified that gum timber weighs three pounds to the foot and other timber four pounds to the foot, I meant lumber and not logs.

Mr. M. C. Moore:

My name is M. C. Moore; I am Rate Expert for the Railroad Commission and Department of Justice; I have had a good many years experience in the service of railroads. My entire experience with railroads was nearly twenty-five years. A large portion of that time, I handled rates as Special Bill Clerk; I have had experience in rates for seven years on the Board of Trade and Cotton Exchange at Meridian, Mississippi.

I have made an exhaustive study of the rate proposition. I have made recent investigations of rates on logs on different railroads in this State. I have made up a statement of tariffs issued by railroads on file with the Mississippi Railroad Commission, which tariffs are still in force; some of them were voluntarily put on and some put on by the Commission and I think the rates stated in that statement are practically all of them in force at this time. The rates which I have made a statement of and on the roads and distances are:

The I. C. R. R. in its tariff 602-E, makes the following rate on logs:

For 5 miles or less, 1¼ cts. per 100 lbs.
For 10 miles and over 5, 1¼ cts. per 100 lbs.
For 15 miles and over 10, 1¼ cts. per 100 lbs.
For 20 miles and over 15, 1½ cts. per 100 lbs.
For 25 miles and over 20, 1¾ cts. per 100 lbs.

The Y. & M. V. R. R. Co., in its tariff 602-I, publishes the same rates for the same distances.

The New Orleans Great Northern, in its tariff 32, publishes the following rates:

1,000 feet for 5 miles or less, $1.00;
1,000 feet for 10 miles and over, $1.00;
1,000 feet for 15 miles and over 10, $1.00;
1,000 feet for 20 miles and over 15, $1.00;
1,000 feet for 25 miles and over 20, $1.25;

The M. & O. in its tariff 4396 publishes the following rates per 100 pounds:

5 miles and less, 1 ct.
10 miles and over 5 miles, 1 ct.
15 miles and over 10 miles, 1½ cts.
20 miles and over 15 miles, 1½ cts.
25 miles and over 20 miles, 1½ cts.

And they publish between West Point, Miss., and Aberdeen, Miss., a distance of 18 miles, 1½ cts.

And between West Point, Miss., and Starksville, Miss., a distance of 24 miles, 1¼ cts.

The Southern Railroad in Mississippi in Tariff No. 1325, publishes the following rate:

For 5 miles or less, 1¼ cts.
For 10 miles and over 5, 1¼ cts.
For 15 miles and over 10, 1¼ cts.
For 20 miles and over 15, 1½ cts.
For 25 miles and over 20, 1¾ cts.

The Southern Railroad in its Tariff F, No. 3123, publishes the same rate exactly as above, for equal distance to points in Mississippi.

The Southern Railroad Company publishes in its Memphis Division Local Tariff, that is, they are Mississippi inter-state rates in same tariff:

For 5 miles or less, per 100 lbs., 1¼ cts.
For 10 miles and over 5, per 100 lbs., 1¼ cts.
For 15 miles and over 10, per 100 lbs., 1¼ cts.
For 20 miles and over 15, per 100 lbs., 1½ cts.
For 25 miles and over 20, per 100 lbs., 1¾ cts.

The Alabama Great Southern Railroad tariff, in Supplement 4, Tariff 160-B, publishes the following rates to Attala, Ala., per car of 40,000 lbs. for a distance of 17 miles, $5.00; for 25 miles and over 17, $5.50. To Avondale, Birmingham and other points, per car of 40,000 lbs., for 10 miles, $6.00; for 20 miles and over 10, $7.00.

Fernwood and Gulf Railroad publishes the following rates in tariff A-124 on pine logs:

For 5 miles and less, 1¼ cts.
For 10 miles and over 5, 1¼ cts.
For 15 miles and over 10, 1¼ cts.
For 20 miles and over 15, 1¼ cts.
For 25 miles and over 20, 1½ cts.

The Natchez, Columbia & Mobile R. R. Co., publishes the following rates on rough timber:

For 5 miles and less, 1½ cts. per 100 lbs.
For 10 miles and over 5, 1½ cts. per 100 lbs.

For 15 miles and over 10, 1½ cts. per 100 lbs.
For 20 miles and over 15, 1½ cts. per 100 lbs.
For 25 miles and over 20, 1½ cts. per 100 lbs.

The Liberty White R. R. publishes in Tariff A-12 for all its distances up to 25 miles at 1¼ cts. per 100 lbs.

The Southern Railway in North Carolina, and this is a copy from the North Carolina Corp'n. Com'n. Annual Report for 1912, on hardwood logs, the following rate per car of 40,000 lbs:

For 5 miles or less, $5.00.
For 10 miles and over 5, $5.00.
For 15 miles and over 10, $6.00.
For 20 miles and over 15, $6.00.
For 25 miles and over 20, $7.00.

Other railroads in North Carolina reported in the same Annual Report:

For 5 miles and less, $6.50.
For 10 miles and over 5, $6.50.
For 15 miles and over 10, $7.00.
For 20 miles and over 15, $7.00.
For 25 miles and over 20, $7.50.

Copy from the Georgia Railroad Commission Annual Report, 1912, logs for saw mills per car, 24,000:

For 5 miles and less, $4.00.
For 10 miles and over 5, $5.00.
For 15 miles and over 10, $6.00.
For 20 miles and over 15, $7.00.
For 25 miles and over 20, $8.00.

Logs for Chair tbs., per car 24,000:

For 5 miles and less, $3.20.
For 10 miles and over 5, $4.00.
For 15 miles and over 10, $4.80.
For 20 miles and over 15, $5.60.
For 25 miles and over 20, $6.40.

Logs, Green Pine, Carload 28,000:

For 5 miles and less, $4.00.
For 10 miles and over 5, $5.00.
For 15 miles and over 10, $6.00.
For 20 miles and over 15, $7.00.
For 25 miles and over 20, $8.00.

In making a rate on a cheaper commodity, the Railroad Commission has to consider what that commodity will bear and in making a rate on oak timber and gum timber, where one is cheaper than the other, the cheaper commodity takes a cheaper rate. I believe that the rates fixed by the Railroad Commission for the Batesville-Southwestern Railroad are reasonable and remunerative rates.

CROSS-EXAMINATION.

I am the Expert Tariff man of the Mississippi Railroad Commission, employed by them for the purpose of instructing the Railroad Commission as to the reasonableness of tariff rates.

MISSISSIPPI RAILROAD COMMISSION.

Regular Meetings 1st and 3rd Mondays, Each Month.

F. M. Sheppard, President, Richton, Miss.; George R. Edwards, McCool, Miss., W. B. Wilson, Corinth, Miss., Commissioners; James Galceran, Secretary, Jackson, Miss.

I hereby certify that the attached list of Freight Tariffs and Tariffs, numbered from 1 to 4 inclusive, are true and correct copies as filed by the Batesville-Southwestern Railroad Company with the Railroad Commission of Mississippi on June 13th, 1913, and of which I am the proper custodian.

Witness my hand and seal, this 23rd day of Sept., 1913.

(SEAL)

JAMES GALCERAN,
Secretary.

No Supplement to this Tariff will be issued except for the purpose of cancelling the Tariff.

B. S. W. F. 1.2
Cancels B. S. W. F. 1.1

RECEIVED AND FILED
June 3rd, 1913
James Galceran, Secretary

BATESVILLE-SOUTHWESTERN RAILROAD
R. J. Darnell, Lessee.

LIST OF
FREIGHT TARIFFS
applying from and to stations on the
BATESVILLE-SOUTHWESTERN RAILROAD

This Index Contains List of Tariff Publications in Effect October 1, 1912.

EXPLANATION OF ABBREVIATIONS
B. S. W.—Batesville-Southwestern Railroad.

FIRST SECTION
Showing Batesville-Southwestern Railroad as Initial Carrier.

CLASS AND COMMODITY TARIFFS

I.C.C. #	B.S.W. #	Issued by	Character	From.
1	A-1	B.S.W.	Classes&Commodities	BetweenB.S.W.Sta.
4	A-2	B.S.W.	Live Stock Carloads	BetweenB.S.W.Sta.

MISCELLANEOUS TARIFFS

I.C.C. #	B.S.W. #	Issued by	Character	From	To
15		W. R. Powe.	Southern Classification	B. S. W. Sta.	Various.

SECOND SECTION

Tariffs showing Batesville Southwestern Railroad as Delivering Carrier NONE ISSUED.

THIRD SECTION

Numerical List of Batesville Southwestern Railroad Tariffs.

I.C.C. #		B.S.W. #	
2	A–1		
4	A–2		
5	FI–2		

ISSUED OCTOBER 1, 1912

Issued by

DARNELL, R. J., Lessee, Memphis, Tenn.

ELLIOTT LANG, Tariff Mgr.

No Supplement to this Tariff will be Issued Except for the Purpose of Cancelling the Tariff.

I. C. C. No. 2
Cancels I. C. C. No. 1

Received and Filed June 3, 1913.
James Galceran, Secretary R. R. Commission.

BATESVILLE-SOUTHWESTERN RAILROAD
R. J. Darnell, Lessee.
A-1
(Cancels No. 1)
FREIGHT TARIFF
of
LOCAL RATES
applying on
CLASSES AND COMMODITIES
between stations on the
BATESVILLE-SOUTHWESTERN RAILROAD

Class rates shown herein may be issued when no specific class rates have been provided. Commodity rates shown herein may be used only when no specific commodity rates have been provided. When governed by classification which also contains distances or mileage rates they will take precedence over the distance or mileage rates in such classification. These class rates may not be used either by themselves or in combination in preference to any specific class rate, nor may these commodity rates be used either by themselves or in combination in preference to any other specific commodity rate.

Governed (except as otherwise provided herein) by Southern Classification No. 38, Agent W. R. Powe's I. C. C. No. 15, and by exceptions to said Classification as published therein under "Note 23," supplements and amendments thereto and reissued thereof.

Issued April 27, 1912. Effective May 27, 1912.

Issued by

R. J. DARNELL, Lessee, Memphis, Tennessee.

ELLIOTT LANG, Traf. Mgr., Memphis, Tennessee.

RULES.

1. Whenever a carload (or less than a carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in car load quantities (or less than car load quantities, as the case may be).

2. The Commodity Rates shown herein apply only on the articles specifically named.

3. The minimum charge for a single shipment will be for one hundred pounds at the class rate to which the shipment belongs, but in no case less than 25 cents. If the shipment contains articles in two or more classes, no one of which is classified higher than first-class, the minimum shall be for one hundred pounds of the article taking the highest rate, but if any one of the articles is classified higher than first-class,

the minimum charge shall be for one hundred pounds at the first-class rate.

4. The minimum car load weight will be twenty-four thousand pounds, otherwise specified in the Classification of this Tariff.

DEMURRAGE RULES.

1. FREE TIME.

On all commodities in car load quantities forty-eight hours (two days) free time will be allowed for loading and unloading.

2. COMPUTING TIME.

(a) On cars held for loading, time will be computed from the first 7 o'clock A. M. after placement on public delivery tracks or on private sidings.

(b) On cars held for unloading, time will be computed from the first 7 A. M. after placement on public delivery tracks or on private sidings and after notice of arrival is sent to consignee.

3. DEMURRAGE CHARGE.

(a) After the expiration of free time, as provided for in the foregoing, a charge of one ($1) dollar per car per day or fraction thereof shall be made for the delay of cars and the use of tracks, except as provided for in Paragraph (b), this rule.

(b) No demurrage charges shall be assessed for the detention of cars on account of weather interference, bunching of cars for loading or unloading, demand of overcharge or errors or omissions on the part of railroad agents or employes.

DISTANCES IN MILES.

From— To—	Batesville, Miss.	Asa, Miss.	Crowder, Miss.
Batesville, Miss.	.....	7.3	15.7
*Asa, Miss.	7.3	.....	8.4
*Crowder, Miss.	15.7	8.4	.....

*No Agent; freight must be paid.

RATES OF FREIGHT.

CLASSES

In Cents Per One Hundred Pounds.

Distances—	1	2	3	4	5	6	A.	B.	C.	D.	E.	F.
5 miles and under	27	24	20	17	14	13	12	15	14	7	17	22
10 miles and over 5	34	28	24	20	18	16	14	17	18	9	24	24
15 miles and over 10	41	33	28	25	22	18	16	19	20	11	27	26
20 miles and over 15	47	37	31	27	25	19	18	23	22	12	33	28

Distances—	Per Bbl.	Per 100 Pounds				
	F.	K.	L.	M.	N.	O.
5 miles and under	24	†11	† 8	†7	†5	†5½
10 miles and over 5 miles	28	†13	†12	†7½	†5½	†5¾
15 miles and over 10 miles	32	†15	†14	†8	†6	†6
20 miles and over 15 miles	36	†17	†16	†9	†6½	†6½

†Reduction in Rates.

COMMODITIES.

COTTON.

5 miles and under	‡11	cents per 100 pounds
10 miles and over 5 miles	‡12½	cents per 100 pounds
15 miles and over 10 miles	‡14	cents per 100 pounds
20 miles and over 15 miles	‡15	cents per 100 pounds

COTTON SEED, CAR LOADS, MINIMUM 30,000 POUNDS.

5 miles and under	‡6½	cents per 100 pounds
10 miles and over 5 miles	‡7½	cents per 100 pounds
15 miles and over 10 miles	‡8	cents per 100 pounds
20 miles and over 15 miles	‡8½	cents per 100 pounds

LOGS, CAR LOADS, MINIMUM 4,500 FEET.

10 miles and under	‡$2.80	per 1,000 feet
15 miles and over 10 miles	‡$3.35	per 1,000 feet
20 miles and over 15 miles	‡$3.90	per 1,000 feet

LUMBER, CAR LOADS, MINIMUM 10,000 FEET.

10 miles and under	‡$3.35 per 1,000 feet
15 miles and over 10 miles	‡$3.90 per 1,000 feet
20 miles and over 15 miles	‡$4.50 per 1,000 feet

BOLTS AND BILLETS, STRAIGHT CAR LOADS.

Minimum Weight 50,000 Pounds, Except When the Capacity of the Car is Less, in Which Case the Capacity of the Car Will Be Minimum.

10 miles and under	‡4½ cents per 100 pounds
15 miles and over 10 miles	‡5½ cents per 100 pounds
20 miles and over 15 miles	‡6¾ cents per 100 pounds

‡Advance in Rates.

No Supplement to this Tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 4.

Received and Filed, June 3d, 1913.

James Galceran, Secretary, R. R. Commission.

BATESVILLE-SOUTHWESTERN RAILROAD
R. J. Darnell, Lessee.
A-2
FREIGHT TARIFF
of
LOCAL RATES
applying on
LIVE STOCK CAR LOADS
between stations on the
BATESVILLE-SOUTHWESTERN RAILROAD

Commodity rates shown herein may be used only when no specific commodity rates have been provided. When governed by classification which also contains distances or mileage commodity rates they will take precedence over the distance or mileage commodity rates in such classification. They may not be used either by themselves or in combination in preference to any specific commodity rate.

Governed (except as otherwise provided herein) by Southern Classification No. 38, Agent W. R. Powe's I. C. C. No. 15, and by exceptions to said Classification as published therein under "Note 23," supplements and amendments thereto and reissues thereof.

Issued Sept. 27, 1912. Effective Oct. 27, 1912.

Issued by

R. J. DARNELL, Lessee, Memphis, Tenn.

ELLIOTT LANG, Traf. Mgr., Memphis, Tenn.

RULES.

1. Whenever a car load (or less than car load) commodity rate is established it removes the application of the class rates, to or from the same points on that commodity in car load quantities (or less than car load quantities, as the case may be).

2. The Commodity Rates shown herein apply only on the articles specifically named.

Horses and mules may be loaded in mixed car loads without requiring partitions between the two kinds of stock, at the discretion of the shipper.

Stallions and jacks, when loaded with horses and mules, to be separated by strong partitions and tied.

3. Live Stock in Mixed Carloads—Other kinds of stock may be handled in mixed car loads when loaded on same floor and separated by strong partitions.

Bulls to be securely tied and separated from the balance of the shipment by strong partitions.

Partitions to be put in by or at the expense of the owner or shipper, subject to inspection and approval of forwarding agent and without injury to car. In loading stock as above, the owner shall assume all risk of damage which may result from such loading.

On such mixed shipments, rate applying on highest rated stock shall apply on entire shipment.

DEMURRAGE RULES.

1. FREE TIME.

On all commodities in car load quantities forty-eight hours (two days) free time will be allowed for loading or unloading.

2. COMPUTING TIME.

(a) On cars held for loading, time will be computed from the first 7 o'clock A. M. after placement on public delivery tracks or on private sidings.

(b) On cars held for unloading, time will be computed from the first 7 A. M. after placement on public delivery tracks or on private sidings and after notice of arrival is sent to consignee.

3. DEMURRAGE CHARGE.

(a) After the expiration of free time, as provided for in the foregoing, a charge of one ($1) dollar per car per day or fraction thereof shall be made for the delay of cars and the use of tracks, except as provided for in Parapraph (b) this rule.

(b) No demurrage charges shall be assessed for the detention of cars on account of weather interference, bunching of cars for loading or unloading, demand of overcharge or errors or omissions on the part of railroad agents or employes.

From— \ To—	Batesville, Miss.	Asa, Miss.	Crowder, Miss.
Batesville, Miss.	.....	7.3	15.7
*Asa, Miss	7.3	.....	8.4
*Crowder, Miss.	15.7	8.4	.....

*No Agent; freight must be paid.

In dollars per car of 36 feet or less in length, shipments in cars more than 36 feet in length will be subject to increase in rates as provided in Classifications and exceptions thereto governing this Tariff.

	Hogs Single Deck.	Cattle, Horses and Mules.	Sheep Single Deck.
10 miles or less	$14.00	$14.00	$12.00
15 miles and over 10 miles	15.00	15.00	13.00
20 miles and over 15 miles	16.00	16.00	14.00

RECEIVED AND FILED, June 3d, 1913.
James Galceran, Secretary R. R. Commission.

BATESVILLE-SOUTHWESTERN RAILROAD
R. J. Darnell, Lessee.
FREIGHT TARIFF
B-1
Applying Between Stations in
MISSISSIPPI
on
CLASSES AND COMMODITIES
To and from Junctions with connecting railroads on traffic from points on the
BATESVILLE-SOUTHWESTERN RAILROAD
to points on other railroads, and on traffic from points on other railroads to points on the
BATESVILLE-SOUTHWESTERN RAILROAD

having origin, destination and entire transportation in the State of Mississippi.

Class rates shown herein may be used only when no specific class rates have been provided. Commodity rates shown herein may be used only when no specific commodity rates have been provided. When governed by classification which also contains distance or mileage rates they will take precedence over the distance or mileage rates in such classification. These class rates may not be used either by them-

selves or in combination in preference to any specific class rate, nor may these commodity rates be used either by themselves or in combination in preference to any other specific commodity rate.

Governed (except as otherwise provided herein) by Southern Classification No. 38, Agent W. R. Powe's I. C. C. No. 15, and by exceptions to said Classification as published therein under "Note 23," supplements and amendments thereto and reissues thereof.

Issued May 6, 1912. Effective May 16, 1912.

Issued by

R. J. DARNELL, Lessee, Memphis, Tenn.

ELLIOTT LANG, Traf. Mgr., Memphis, Tenn.

RULES.

1. Whenever a car load (or less than a car load) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in car load quantities (or less than car load quantities, as the case may be).

2. The Commodity Rates shown herein apply only on the articles specifically named.

3. The minimum charge for a single shipment will be for one hundred pounds at the class rate to which such shipment belongs, but in no case less than 25 cents. If the shipment contains articles in two or more classes, no one of which is classified higher than first-class, the minimum shall be for one hundred pounds of the article taking the highest rate, but if any one of the articles is classified higher than first-class, the minimum charge shall be for one hundred pounds at the first-class rate.

4. The minimum car load weight will be twenty-four thousand pounds, unless otherwise specified in the Classification or this Tariff.

DEMURRAGE RULES.

1. FREE TIME.

On all commodities in car load quantities forty-eight hours (two days) free time will be allowed for loading or unloading.

2. COMPUTING TIME.

(a) On cars held for loading, time will be computed from the first 7 o'clock A. M. after placement on public delivery tracks or on private sidings.

(b) On cars held for unloading, time will be computed from the first 7 A. M. after placement on public delivery tracks or on private sidings and after notice of arrival is sent to consignee.

3. DEMURRAGE CHARGE.

(a) After the expiration of free time, as provided for in the foregoing, a charge of one ($1) dollar per car per day or fraction thereof shall be made for the delay of cars and the use of tracks, except as provided for in Paragraph (b) this rule.

(b) No demurrage charges shall be assessed for the detention of cars on account of weather interference, bunching of cars for loading or unloading, demand or overcharge or errors or omissions on the part of railroad agents or employes.

NOTE 1. NATIVE GROWN PRODUCTS.

Where reference is made to this note, rates on commodities specified apply only where same was grown in the State of Mississippi and shippers endorse on bill of lading the words "I certify the above described product is home or native grown," signing his name to certificate on original, duplicate bills of lading, as well as the copy of same left with the agent.

NOTE. 2. SYRUPS AND MOLASSES, APPLICATION OF RATES ON.

Where reference is made to this note, rates on Syrups and Molasses, product of native grown cane, apply only when

the Syrup and Molasses are made from cane grown within the State of Mississippi, and the shipper endorses on the bill of lading the words, "I certify the above described product is home or native grown," signing his name to certificate on original, and duplicate bills of lading and the copy of same left with the agent.

DISTANCES IN MILES.

From— To—	Batesville, Miss.	Asa, Miss.	Crowder, Miss.
Batesville, Miss.	.....	7.3	15.7
*Asa, Miss.	7.3	.....	8.4
*Crowder, Miss.	15.7	8.4	.....

*No Agent; freight must be paid.

RATES OF FREIGHT.

CLASSES

In Cents Per Hundred Pounds.

Distances—	1	2	3	4	5	6	A.	B.	C.	D.	E.	F.
5 miles and under	24	22	18	15	13	12	11	13½	13	6	15	20
10 miles and over 5	31	25	22	18	16	14	13	15	16	8	22	22
15 miles and over 10	37	30	25	22½	20	16	14	17	18	10	24	23
20 miles and over 15	42	33	28	24	22½	17	16	21	20	11	30	25

Distances—	Per Bbl.	Per 100 Pounds				
	F.	K.	L.	M.	N.	O.
5 miles and under	22	10	7	6	4½	5
10 miles and over 5	25	12	11	7	5	5½
15 miles and over 10	29	13½	13	7	5	5½
20 miles and over 15	32	15	14	8	6	6

RATES OF FREIGHT APPLYING ON COMMODITIES.

COMMODITIES. Rates in Cents Per One Hundred Pounds, Except as Otherwise Specified.	5 Miles and Under	10 Miles and Over 5	15 Miles and Over 10	20 Miles and Over 15
BOLTS AND BILLETS, straight car loads, minimum 50,000 pounds, except when the capacity of the car is less, in which case the marked capacity of the car will be the minimum	$ .04	$ .04	$ .05	$ .06
COTTON, in bales	.10	.11	.12	.13
COTTON SEED, car loads, minimum 30,000 pounds	.06	.06½	.07	.07½
COTTON SEED for planting, any quantity	.07	.09	.11	.12
GRAIN (native grown), Corn, Oats, Rye and Wheat, car loads, minimum 24,000 lbs. (See Note 1)	.07	.09	.11	.12
HAY (native grown), car loads, minimum 20,000 pounds (See Note 1)	.07	.09	.11	.12
LOGS, car loads, minimum, 45,000 feet, per 1,000 feet board measure	2.50	2.50	3.00	3.50
LUMBER, car loads, minimum 10,000 feet, per 1,000 feet	3.00	3.00	3.50	4.00
SYRUPS AND MOLASSES, product of native grown cane (not mixed or rectified) in original packages, when packed in tin cans, boxed or jacketed, barrels, half barrels, kegs and kits, any quantity (See Note 2)	.13	.16	.20	.22

Following appears on back:

R. J. Darnell vs. Miss. R. R. Com. Certified copies of tariffs on file with Miss. R. R. Com. introduced on trial of case.

R. J. Darnell, Complainant

vs. No. 9

George R. Edwards, et al, constituting the Mississippi Railroad Commission, Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

DECREE.

This day this cause coming on to be heard on Bill, Answer and oral proof, taken by agreement of counsel before the Court, and the Court after partially considering the same, took said cause under advisement, to be further heard and determined in vacation, and now, having fully considered the same, the Court doth find that the Complainant is not entitled to the relief sought in his Bill; that the intra-state rate established by the Mississippi Railroad Commission is a reasonable rate, and that the same should be enforced.

It is, therefore, ordered, adjudged and decreed that the Writ of Injunction prayed for in the Bill be denied, and that Complainant's Bill be dismissed.

It is further ordered and adjudged that the Complainant, R. J. Darnell, pay all costs incurred in this behalf, for which execution will issue as at law.

Ordered, adjudged and decreed, this the 7th day of December, A. D. 1914. To the action of the Court in denying the injunction and dismissing the Bill, Complainant excepts and prays an appeal.

H. C. NILES,
United States District Judge.

R. J. Darnell

vs.

George R. Edwards, F. M. Sheppard and W. B. Wilson, Constituting the Mississippi Railroad Commission, Defendants.

IN EQUITY.

IN THE UNITED STATES DISTRICT COURT FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

To the Honorable Henry C. Niles, District Judge:

Petition for Appeal, filed March.....A. D. 1915 in the District Court of the United States for the Jackson Division of the Southern District of the State of Mississippi.

The above named Plaintiff feeling himself aggrieved by the decree made and entered in this cause on the 7th day of December, A. D. 1914, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States, sitting at Washington, District of Columbia.

The sole question in the case is whether an order passed by the Mississippi Railroad Commission on July 23rd, 1913, is confiscatory as against the plaintiff, in violation of the Constitution of the United States.

And your petitioner further prays that the proper order touching the security required of him to perfect his appeal be made.

MONTGOMERY & MONTGOMERY,
Solicitors for Plaintiff.

The petition granted and the appeal allowed upon giving bond, conditioned as required by law, in the sum of $1,000.00.

This the 20th day of March, A. D. 1915.

H. C. NILES,
Judge.

R. J. Darnell, Plaintiff

vs. No. 9

George R. Edwards, F. M. Sheppard and W. B. Wilson, Constituting the Mississippi Railroad Commission, Defendants.

IN EQUITY.

IN THE UNITED STATES DISTRICT COURT FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

Assignment of Errors, filed March....., A. D. 1915. In the District Court of the United States for the Jackson Division of the Southern District of the State of Mississippi.

And now, on this the.....day of March, A. D. 1915, came the plaintiff, R. J. Darnell, by his Solicitors, Montgomery & Montgomery, and says that the decree entered in the above cause on the 7th day of December, A. D. 1914, is erroneous and unjust to the plaintiff.

First. Because the Court erred in entering the said decree and holding that the rate established by the Mississippi Railroad Commission for the line of railroad operated by the plaintiff, R. J. Darnell, as lessee, is a reasonable rate and that the same should be enforced.

Second. Because the Court erred in adjudging and decreeing that the writ of injunction prayed for in the bill be denied and that the bill be dismissed.

Third. Because the decree of the Court is contrary to the evidence in this: the evidence showed that the rate which was established by the Mississippi R. R. Commission on July 23, 1913, for the Batesville-Southwestern Railroad, which was operated by the plaintiff, R. J. Darnell, as Lessee, was a rate which if enforced on said railroad by the said plaintiff as lessee, as ordered in the said order of the said Railroad Commission, would be confiscatory and in violation of the Fourteenth Amendment of the Constitution of the United States and the Court erred in holding that under the evidence the rate was a reasonable rate.

Fourth. Because the Court, on the application for a temporary injunction erred in holding that the plaintiff, R. J. Darnell, was not entitled to make a charge of one-twentieth (1/20) of the amount alleged to have been expended by him in the construction of the Batesville-Southwestern Railroad, as annual rental and as an operating charge and the Court erred in not allowing that annual rental to be considered in figuring the net operating revenue expended by the said railroad.

Wherefore, the Plaintiff prays that the said decree be reversed and the District Court directed to enter such decree as is prayed for by the original bill in the cause, or that the Supreme Court shall reverse and render a proper decree on the record.

MONTGOMERY & MONTGOMERY,
Solicitors for Plaintiff.

Following appears on back:

R. J. Darnell vs. Geo. R. Edwards, et als. Petition for Appeal and Assignment of Errors. Filed April 3, 1915, L. B. Moseley, Clerk. Montgomery & Montgomery, Attys. at Law, Tunica, Miss.

R. J. Darnell, Plaintiff
vs. No. 9
Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, Constituting the Mississippi Railroad Commission, Defendants.

BOND ON APPEAL.

Know all Men by the Presents: That we, R. J. Darnell, Principal, and United States Fidelity & Guaranty Co., as Sureties, acknowledge ourselves to be jointly indebted to Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, constituting the Mississippi Railroad Commission, Appellees in the above cause, in the sum of one thousand ($1,000.00) dollars, conditioned that whereas: On the 7th day of December, A. D. 1914, in the District Court of the United States for the Jackson Division of the Southern District of Mississippi, in a suit

pending in that Court, wherein R. J. Darnell, was Plaintiff, and Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, constituting the Mississippi Railroad Commission were defendants, numbered on the Equity Docket as Number 9, a decree was rendered against the said R. J. Darnell, and the said R. J. Darnell having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of the Court, to reverse the said decree and a citation directed to the said George R. Edwards, F. M. Sheppard and W. B. Wilson, constituting the Mississippi Railroad Commission, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington, in the District of Columbia, on the .....day of....., A. D. 1915, next.

Now, if the said R. J. Darnell shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then, the above obligation to be void; else, to remain in full force and virtue.

R. J. DARNELL, Principal.
UNITED STATES FIDELITY & GUARANTY CO.
By CLINTON W. SCHLEY, Act. & Atty. in Fact.

.....
Sureties.

Approved March 31st, 1915.

H. C. NILES, District Judge.

POWER OF ATTORNEY.

14056.

Know All Men by These Presents:

That the United States Fidelity & Guaranty Company, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint H. F. Harwell, Clinton W. Schley, L. L. Bebout and William M. Hall, of the City of Memphis, State of

Tennessee, its true and lawful attorneys in and for the States of Tennessee, Mississippi and Arkansas, for the following purposes, to-wit:

To sign its name as Surety to, and to execute, seal and acknowledge all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said United States Fidelity & Guaranty Company, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and that the said United States Fidelity & Guaranty Company, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever any one of the said H. F. Harwell, and the said Clinton W. Schley, and the said L. L. Bebout, and the said William M. Hall, may lawfully do in the premises by virtue of these presents.

In witness whereof, the said United States Fidelity & Guaranty Company has caused this instruction to be sealed with its corporate seal, duly attested by the signatures of its Vice President and Assistant Secretary, this the 6th day of December, A. D. 1911.

UNITED STATES FIDELITY & GUARANTY CO.,
By (Sig.) W. W. SYMINGTON, Vice President.
(Sig.) WM. T. MORGAN, Assistant Secretary.
(SEAL).

SEAL.
STATE OF MARYLAND } ss.
BALTIMORE CITY.

On this the 6th day of December, A. D. 1911, before me personally came W. W. Symington, Vice President of the United States Fidelity & Guaranty Company, and Wm. T. Morgan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland, that they, the said W. W. Symington and Wm. T. Morgan, were respectively the Vice President and Assistant Secretary of the said United States Fidelity & Guaranty Com-

pany, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice President and Assistant Secretary, respectively, of said Company.

My commission expires the first Monday in May, A. D. 1912.

(Sig.) A. D. PATRICK, N. P.

SEAL.
STATE OF MARYLAND } Set.
BALTIMORE CITY.

I, Stephen C. Little, Clerk of Superior Court of Baltimore City, which Court is a Court of Record, and has a Seal, do hereby certify that A. D. Patrick, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was, at the time of so doing, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgements, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this the 6th day of December, A. D. 1911.

(Sig.) STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

COPY OF RESOLUTION.

That whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its fact, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are by law, municipal or otherwise, or by any statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland or by the rules, regulations, orders, customs, practice or discretion of any board, body organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded, for the security or protection of, by or for any persons or person, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities, whatsoever, conditioned for the doing or not doing of anything or on any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Wm. T. Morgan, Assistant Secretary of the United States Fidelity and Guaranty Company, hereby certify that at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company, at the City of Baltimore, on the 11th day of July, A. D. 1910, at which was present a quorum of said Directors duly authorized to act in the premises, resolutions were passed and entered on the

minutes of said Company, of which resolutions the foregoing is a true copy of the whole thereof.

In testimony whereof, I have hereunto set my hand and the seal of the United States Fidelity and Guaranty Company, this the 6th day of December, A. D. 1911.

I, Wm. T. Morgan, Assistant Secretary of the United States Fidelity & Guaranty Company, do hereby certify that the above and foregoing is a full, true and correct copy of the original power of attorney given by said Company to H. F. Harwell, Clinton W. Schley, L. L. Bebout and William M. Hall, of Memphis, Tennessee, authorizing and empowering them to sign bonds as therein set forth.

Given under my hand and the seal of said Company, at Baltimore, Maryland, this the 18th day of December, A. D. 1911.

WM. MORGAN,
Assistant Secretary.

The following appears on the back:

Number 9. R. J. Darnell vs. Geo. R. Edwards. Bond on Appeal. Approved March 31st, A. D. 1915. Filed April 3rd, 1915. L. B. Moseley, Clerk. Montgomery & Montgomery, Attorneys at Law, Tunica, Miss.

IN THE UNITED STATES DISTRICT COURT FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Complainant and Appellant
vs. Number 9
George R. Edwards, et al., Defendants and Appellees.

To the Honorable Henry C. Niles, District Judge:

The petition of R. J. Darnell would respectfully show that on the.....day of December, 1914, there was rendered by your honor a decree denying to the complainant a permanent injunction against the defendants, constituting the Railroad Commission of Mississippi, as was prayed for in the original bill in this cause, and your petitioner would further

show that he has been allowed by your Honor for an appeal to the Supreme Court of the United States from that decree and that citation has been issued by your Honor for all the defendants, returnable on the 30th day of April, A. D. 1913.

Your petitioner would further show that because of the great number of exhibits which are in the record of the trial of the cause before your Honor in Vacation at Oxford, Mississippi, and because of the largeness of that record, your petitioner does not believe that he will be able to file the same in the Supreme Court of the United States by the 30th day of April, A. D. 1913.

The premises considered, your petitioner prays that he be granted an enlargement of time in which to file the record in the Supreme Court of the United States and that he be allowed thirty (30) days from April 30th, 1915, in addition to the time allowed by law; and, as in duty bound, your petitioner will ever pray, etc.

MONTGOMERY & MONTGOMERY,
Solicitors for R. J. Darnell.

The following appears on the back:

No. 9. R. J. Darnell vs. Miss. R. R. Com. Petition. Filed April 26th, 1915. L. B. Moseley, Clerk. Montgomery & Montgomery, Attys. at Law., Tunica, Miss.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Complainant and Appellant
vs. Number 9
George R. Edwards, et al., Defendants and Appellees.

This cause come on this day to be heard on the petition of R. J. Darnell, Complainant and Appellant in the above styled cause, praying for an enlargement of time in which to file the record in this cause in the Supreme Court of the United States.

And, it appearing to the Court that the record contains many exhibits and is a large record and that the complainant will hardly have time to file the same in the Supreme Court of the United States by the 30th day of April, A. D. 1913, which is the time required by law.

It is thereupon ordered, adjudged and decreed, that the said complainant and appellant be, and he is hereby allowed in addition to the thirty (30) days allowed him by law, thirty (30) days from April 30th, 1915, in which to file the record in this cause in the Supreme Court of the United States.

Ordered, adjudged and decreed, in vacation, this the 9th day of April, A. D. 1915.

H. C. NILES,
District Judge.

The following appears on the back:

No. 9. R. J. Darnell vs. Miss. R. R. Com. Order extending time. Filed April 26th, 1915. L. B. Moseley, Clerk. Montgomery & Montgomery, Attys. at Law, Tunica, Miss.

R. J. Darnell, Plaintiff

vs. No. 9

Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, Constituting the Railroad Commission of the State of Mississippi, Defendants.

IN EQUITY.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

To the Honorable Henry C. Niles, District Judge:

The petition of R. J. Darnell, Plaintiff and Appellant in the above styled cause respectfully showeth unto your honor that on the 20th day of March, 1915, your honor granted to your petitioner an appeal from a decree rendered by your honor on the 7th day of December, 1914, and that your petitioner filed a bond conditioned according to law which was approved by your Honor on the 31st day of March, 1915; and

on the said last mentioned date your Honor issued a citation directed to the defendants and their attorneys of record citing them to appear and show cause in the Supreme Court of the United States why the order and decree appealed from should not be corrected, which said citation was returnable thirty days after date.

Your petitioner further showeth unto your Honor that on the 9th day of April, 1915, your Honor for cause shown granted to your petitioner an enlargement of time in which to prepare and file the record in the above case in the Supreme Court of the United States, which said order allows the said petitioner and appellant until May 30th, 1915, in which to file the said record in the Supreme Court.

Your petitioner further showeth that on the 8th day of May, 1915, your petitioner through his attorneys filed with the Clerk of the said District Court his praecipe showing the parts of the record which he wished to have included in the record, and on the said last mentioned date your petitioner also filed a condensed and narrative form of the evidence which had been taken on the trial of the said cause; and your petitioner also notified the attorneys of record for the defendants of the filing of his praecipe and condensed form of the evidence, and stated that he would ask your Honor to approve the same on the 19th day of May, 1915.

Your petitioner further showeth that the record has been made up by the clerk and the same contains all of the papers, exhibits, etc., which were set out in the praecipe of the petitioner except that the decree of the Court of the 7th day of December, 1915, is not in the record, and it is necessary that the same be included within the record.

Your petitioner further showeth that he is advised by the attorneys of record for the defendants that because of the large amount of business which the attorney for the defendant has because of the fact that he is the attorney general of the State of Mississippi the attorney for the defendant has not been able to go over the record to see if he desires anything else included in the record which is not set out in the praecipe of your petitioner, nor has he, the said attorney for the defendant, had sufficient opportunity in which to inspect the

condensed and narrative form of the testimony. Your petitioner further showeth that the attorneys of record for the defendant have asked that your petitioner pray for a further enlargement of the time in which to file the record in this cause in the Supreme Court of the United States, and the attorneys for the defendants have joined in this petition with the plaintiff.

The premises considered, petitioner prays that he be granted a further enlargement of the time in which to file the record in the above styled cause in the Supreme Court of the United States, and that he be allowed forty-five (45) days from May 30th in addition to the time already granted by the court; and as in duty bound he will ever pray, etc.

MONTGOMERY & MONTGOMERY,
Attorneys for Plaintiff.

GEO. H. ETHRIDGE, Asst. Atty. General,
Attorney for Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Plaintiff

vs. No. 9

Geo. R. Edwards, et al., Defendants.

This cause came on this day to be heard in vacation on the petition of R. J. Darnell, Plaintiff, in the above styled cause, which said petition the defendants through their attorney have joined, praying for further enlargement of the time in which to file the record in this cause in the Supreme Court of the United States.

And it appearing to the court that sufficient cause for a further enlargement of the time in which to file the record has been shown in the said petition.

It is therefore, ordered, adjudged and decreed that the said plaintiff be and he is hereby allowed forty-five days from

the 30th day of May, 1915, in which to file the record in this cause in the Supreme Court of the United States.

Ordered, adjudged and decreed in vacation this..... day of May, 1915.

H. C. NILES,
District Judge.

UNITED STATES OF AMERICA:

To George R. Edwards, F. M. Sheppard and W. B. Wilson, Constituting the Mississippi Railroad Commission, and James Stone and George H. Ethridge, Assistant Attorney General, their Attorneys:

You are hereby notified that in a certain case in Equity in the United States District Court in and for the Jackson Division of the Southern District of Mississippi, wherein R. J. Darnell is complainant and George R. Edwards, F. M. Sheppard and W. B. Wilson, constituting the Mississippi Railroad Commission, are defendants, an appeal has been allowed the said complainant therein to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear in said Court at Washington, District of Columbia, thirty (30) days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Henry C. Niles, Judge of the United States District Court for the Jackson Division of the Southern District of Mississippi, this 31st day of March, A. D. 1915.

(Signed) H. C. NILES,
United States District Judge.

(Endorsed thereon).

Service of the above citation is admitted. This May 25th, 1915.

(Signed) MISSISSIPPI RAILROAD COMMISSION,
By GEO. H. ETHRIDGE, Ass't. Atty. General,
Its Attorney.

Endorsed on the back thereof:

No. 9. R. J. Darnell vs. Geo. R. Edwards. Citation. Filed April 3, 1915. L. B. Moseley, Clerk. Montgomery & Montgomery, Attorneys at Law, Tunica, Miss.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

R. J. Darnell, Appellant
vs. No. 9. In Equity.
George R. Edwards, F. M. Sheppard and W. B. Wilson, The Mississippi Railroad Commission, Appellees.

To the Clerk of the United States District Court for the Jackson Division of the Southern District of Mississippi:

You are hereby instructed and directed in making up the record for appeal in the above styled cause, wherein R. J. Darnell has prayed an appeal to the Supreme Court of the United States from a decree rendered on December 7th, 1914, denying to R. J. Darnell a permanent injunction against the Appellees, the Mississippi Railroad Commission, to insert:

1. The bill of complaint in full and Exhibits A, B, C, D, E, F, G, H and I.

2. Decree rendered on the 19th day of September, 1913, setting the hearing of the application for a preliminary injunction at Birmingham, Alabama, on October 3rd, 1913, before the Honorable David D. Shelby, Judge of the Circuit Court of Appeals, and the Honorable W. I. Grubb, of Birmingham, Alabama, Judge of the District Court of Alabama, and the Honorable Henry C. Niles, Judge of the District Court for the Southern District of Mississippi.

3. The answer of the defendants, George R. Edwards, F. M. Sheppard and W. B. Wilson, composing and being the Railroad Commission of the State of Mississippi.

4. Certified copy of the charter of incorporation of the Batesville-Southwestern Railroad Company, introduced at the trial of the application for a temporary restraining order.

5. Decree of the Court on the application for restraining order, rendered September 13th, 1913, and opinion of the Court rendered November 10th, 1913.

6. Condensed form of the testimony of all witnesses which was taken at the trial in June, 1914, at Oxford, Mississippi and all exhibits to the testimony.

The testimony of Elliott Lang and Exhibit 1 thereto;

The testimony of W. L. Park;

The testimony of A. S. Baldwin;

The testimony of R. J. Darnell and Exhibit 1 thereto;

All the aforementioned witnesses being introduced for and on behalf of the complainant;

The testimony of J. H. Hines;

The testimony of J. G. Neudorfer;

The testimony of C. O. Love;

The testimony of C. B. Vance;

The testimony of J. H. Broyles;

The testimony of Mr. Griffith;

The testimony of M. H. Mims;

The testimony of M. C. Moore and Exhibit 1 thereto;

The testimony of J. A. Tucker.

All of the last mentioned witnesses being introduced for and on behalf of the defendants.

7. Decree of the Court rendered on the 7th day of December, 1914, denying the permanent injunction prayed for by the complainant;

8. Petition for Appeal filed by the appellant;

9. Order of the Court granting the appeal;

10. Assignment of errors;

11. Appeal bond;

12. Citation signed by H. C. Niles, Judge, with waiver of service of the same;

13. Petition for additional time to perfect appeal;

14. Order granting further time to appeal;

15. Petition for further extension of time;

16. Order extending time;

17. Praecipe;

18. Index to the Record.

MONTGOMERY & MONTGOMERY,
Attorneys for Complainant and Appellant.

The foregoing praecipe and condensed form of record is satisfactory to me and I join in the request to have it incorporated in the printed record.

GEO. H. ETHRIDGE, Asst. Atty. General,
Attorney for Defendant.

United States of America,

Southern District of Mississippi.

I, L. B. Moseley, Clerk of the District Court of the United States for the Southern District of Mississippi, do hereby certify that the foregoing 116 pages contain a true and correct transcript of the proceedings had and done in the case of R. J. Darnell vs. The Mississippi R. R. Commission as the same appears of record in my office at Jackson, Mississippi.

Witness my hand and the seal of said court hereto affixed at Jackson in said District this the 29 day of [illegible] 1915.

L. B. Moseley Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

R. J. DARNELL, Appellant,

vs. No. 595.

GEORGE R. EDWARDS, F. M. SHEPHERD AND W. B. WILSON, Constituting the Mississippi Railroad Commission, Appellees.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

ABSTRACT OF PLEADINGS.

WILLIAM P. METCALF,
Solicitor for R. J. Darnell.

S. C. TOOF & CO., PRINTERS, MEMPHIS

INDEX

LIST OF ALL CASES REFERRED TO.

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APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

ABSTRACT OF PLEADINGS.

For sake of convenience appellant will herein be spoken of as the complainant or plaintiff. The appellant in this cause began the same by filing his original bill of complaint in the Jackson Division of the Southern District of Mississippi.

The original bill states that the defendants constitute the Mississippi Railroad Commission and that as such they are vested with the power of fixing reasonable and proper rates to be charged by railroad corporations operating in the State of Mississippi, so far as the traffic on said railroad is intrastate, but that the said Commission, defendant, has no power or authority to arbitrarily and unjustly require any railroad company or individual operating a railroad in the State of Mississippi to fix a tariff or rate on freight in the State of Mississippi which is unreasonable and unjust and which exceeds or equals the cost to the railroad company of handling the freight on its line of railroad, or which will not allow to the said railroad a reasonable and fair profit in its business as a common carrier of freight for hire within the said state.

The said original bill further states that the complainant was, for many years prior to the 7th day of June, 1910, the owner of about 18,000 acres of timber land in the Counties of Panola, Quitman and Tallahatchie, in the State of Mississippi; the land being owned by him as an individual, and that on that date, being desirous of providing a convenient and easy method of reaching the timber market with the timber on the said land, the complainant entered into a contract with the Illinois Central Railroad Company, a corporation organized, chartered and

incorporated under th laws of the State of Illinois, owning and operating a line of railroad from the City of Chicago, Illinois, to the City of New Orleans, Louisiana, and the said line of railroad passes through the County of Panola and the Town of Batesville, in that county, in the said State of Mississippi. Under the terms of the said contract which the complainant made, as Exhibit "A" to his original bill, the complainant and the Illinois Central Railroad Company were to construct a railroad beginning at Batesville Mississippi, aforesaid, and extending in a southwesterly direction, intersecting the Chickasaw Boundary Line in or near Section 5, Township 27, North of Range 2 East, of Panola County, Mississippi; thence southwesterly and southerly over the Yocona River to a point on the south bank of said river in Tallahatchie County, Mississippi.

Under the terms of the said contract, the complainant was to pay certain specified parts of the cost of the construction of the railroad, and the Illinois Central Railroad Company was to furnish certain material and pay to the complainant $2,000 00 per mile for the construction.

The original bill further states that the said railroad was constructed according to the terms of that contract and supplemental contracts which are Exhibits "B" and "C" to the original bill. The con-

tracts, Exhibits "A," "B" and "C" to the said original bill may be found on pages 18 to 35, inclusive, of the record.

The original bill further avers that after the contract which was Exhibit "A" was executed, the Batesville Southwestern Railroad Company was organized, chartered and incorporated under the laws of the State of Mississippi, to construct and operate the railroad which was being built by the complainant and the Illinois Central Railroad Company under that contract, and the said Batesville Southwestern Railroad Company was made a party to the contract which is Exhibit "A" in the contracts which are Exhibits "B" and "C."

The original bill further avers that under the terms of the three contracts aforesaid, the complainant was given the right to operate, for a period of twenty years, the railroad which was constructed under the terms of the three contracts, and that after the terms of twenty years had expired the Illinois Central Raiload Company, or its assigns, became the owner in fee of the railroad which was constructed.

The original bill avers that the complainant had been, since April, 1912, operating the line of railroad which was constructed as aforesaid, and that the enterprise was an individual enterprise of the complainant.

The original bill avers that the timber located on the land owned by the complainant adjoining the railroad has been sold by him to R. J. Darnell, Incorporated. That under the contract of sale with that corporation it is to have the right to cut and market all of the timber on the lands mentioned, and pay to the complainant so much for the stumpage cut. The original bill further avers that a large percentage of the business of said railroad consists in the shipment over it of timber from the lands of the complainant; said shipments being made by R. J. Darnell, Incorporated, the owners of the timber, and that practically all of the business of the said railroad as a common carrier consists of hauling saw logs to the market over its said railroad line to points on the line to Batesville. That the outgoing shipments of saw logs are practically the entire business of the said railroad, as it has very little, if any, business in the way of carrying commodities over its said line from Batesville to the terminus of the said road or any point thereon. That the revenue of the said road is derived almost exclusively from the outgoing shipments over it of saw logs from points along its lines, or adjacent or accessible thereto, and it has practically no other business as a common carrier.

The original bill avers that up to the time of the filing of the same, the complainant had expended, in the construction and equipment of the railroad,

in accordance with the terms of the three contracts aforesaid, the sum of $162,667.67, and that that amount had been expended by him as an individual. That, although R. J. Darnell, Incorporated, a corporation chartered and incorporated under the laws of the State of Tennessee, with its domicile at Memphis, Tennessee, was a party to the three contracts aforesaid, yet the said corporation did not expend anything towards the construction and equipment of the said railroad, and had absolutely no interest in the said railroad, but the same was being operated by the complainant as an individual enterprise and that the said corporation, acknowledging that fact, passed a resolution of its Board of Directors, on August 11th, 1913, authorizing, empowering and directing its President and Secretary to convey to the complainant all of the right, title and interest which the said corporation had in the three contracts which are Exhibits "A," "B" and "C" to the original bill, and that in compliance with that resolution, the President and Secretary of the said corporation did execute a conveyance, conveying to R. J. Darnell, the complainant, all of the interest which the said corporation had in the said three contracts. The resolution of the Board of Directors of August 11th, 1913, and the conveyance made in accordance therewith, are made Exhibits "D" and "E" to the original bill and may be found on pages 35 to 42, inclusive, of the record.

The original bill further avers that after the complainant began the operation of the railroad, which had been constructed as aforesaid, on the 27th day of April, 1912, he provided, through his Traffic Manager, and promulgated a reasonable tariff on freight as a common carrier, and, among other things, on logs in car load lots, minimum 4,500 feet, and the rates which were fixed in the said tariff were as follows, to-wit:

For 10 miles and under.....$2.80 per 1,000 feet
For 15 miles and over 10 miles.. 3.35 per 1,000 feet
For 20 miles and over 15 miles.. 3.90 per 1,000 feet

A copy or reprint of the tariff is made Exhibit "F" to the original bill in this cause, and it may be found on pages 42 to 45, inclusive, of the record.

The original bill avers that the rate which was established by the Traffic Manager of the complainant was a fair and reasonable rate, and as cheap a rate as could be charged for the freight on logs by any railroad.

The original bill further avers that certain citizens owning timber land in the country through which the railroad ran, filed a petition with the Railroad Commission of Mississippi; a copy of the petition is made Exhibit "G" to the original bill and may be found on page 46 of the record. The said petition charges that the rates which had been es-

tablished by the complainant in its tariff as aforesaid, were extortionate, unjust and confiscatory so far as its rates on logs were concerned.

The original bill further avers that on July 23rd, 1913, the Railroad Commission of the State of Mississippi passed an order sustaining the petition which had been filed and reducing the rates on logs in car load lots from what it had been fixed and established by the Traffic Manager of the complainant, and in the said order the said Railroad Commission divided the logs into two classes and ordered that the complainant should collect, as rates on logs in car load lots, minimum 4,500 feet, on the railroad which was being operated by him, rates as follows, to-wit:

Oak, ash and hickory logs:

10 miles and under .....$1.50 per 1,000 feet
15 miles and over 10 miles..... 1.75 per 1,000 feet
20 miles and over 15 miles..... 2.00 per 1,000 feet

On gum and all other logs except oak, ash and hickory:

10 miles and under .....$1.25 per 1,000 feet
15 miles and over 10 miles..... 1.50 per 1,000 feet
20 miles and over 15 miles..... 1.75 per 1,000 feet

And the said Railroad Commission of Mississippi did also, in the said order, require the complainant

to repay to such person who had shipped logs over the said railroad, on the surrender by such person or persons of the original bills of lading, showing such payments, the difference between the rates as fixed under and by the order of the said Railroad Commission and the tariff of freight rates promulgated by the Traffic Manager of the complainant under date of April 27th, 1912. The order of the Commission is made Exhibit "H" to the original bill and may be found on page 46.

The original bill avers that the cost of hauling one class of logs is as much as the cost of hauling any other class of logs, and for that reason, in fixing his tariff, the complainant had not divided the logs into classes.

The original bill avers that the complainant, in the operation of the railroad from July 1st, 1912, to June 30th, 1913, inclusive, expended, as operating expenses, the following amounts:

Operating expenses	$ 4,296.20
Rental, based on one-twentieth of the amount invested ($162,667.67), the equivalent of one year	8,133.39
Total amount operating expenses	12,439.59

That during that time, the complainant moved over the railroad, one mile, 245,789 tons at the average cost of moving one ton of freight one mile, $5.06.

That the cost of hauling 1,000 feet of oak or gum or other logs 13 miles was $3.0613. That the cost of hauling 1,000 feet of oak or gum or other logs 11 miles was a little more than $3.50. (Record pages 12 and 13.)

The original bill avers that the amount which was expended by him in the construction and equipment of the railroad was $162,667.67; that the interest on that amount at 6 per cent for one year is $9,760.06; that the receipts which were received by the complainant in the operation of the railroad for the year above mentioned was the sum of $15,553.01, leaving the sum of $3,123.42 net profit received by the complainant for that year, which amounted to a return of 1.92% on his investment, when the complainant was entitled to receive a return of 6%. (Record page 13.)

The original bill avers that this 1.92% profit on the investment was earned by him while operating the railroad for the time mentioned under the rates which had been established by him on April 27th, 1912.

The original bill avers that if the said tariff which was established by the Railroad Commission of Mississippi and ordered to be put in force by the complainant over the said railroad were put into effect, that it would amount to confiscation of the property

of the complainant, in that the complainant could not, under those rates, receive as much for hauling logs over his railroad as it cost him in actual operating expense to haul them.

The original bill avers that the said tariff which was established by the Railroad Commission of Mississippi is not only unjust and unreasonable, but is discriminatory against the complainant in the operation of the said railroad, as will appear by a comparison of the tariff of rates in operation on other railroads. That comparative statement was made Exhibit "I" to the original bill and may be found on page 48 of the record.

The original bill further avers that the complainant is a citizen and resident of the State of Tennessee, operating and leasing a line of railroad in the State of Mississippi, and that the unreasonable rate which was established by the Railroad Commission of Mississippi is in violation of Section 14 of the Constitution of the United States, which section provides that no person shall be deprived of life, liberty or property except by due process of law.

The original bill further avers that the order of the said Railroad Commission of Mississippi is also in violation of Section 2 of Article 4 of the Constitution of the United States, which provides that the citizens of each state shall be entitled to all privi-

leges and immunities in the several states, and that under that provision of the Constitution, complainant, as a citizen of the State of Tennessee, is entitled to own land in the State of Mississippi; to lease a railroad and operate the same in the State of Mississippi for his own individual profit, and that the Railroad Commissioners have no legal right to, in any manner, interfere with him, or if mistaken in that, the complainant further avers that the Railroad Commissioners have no right to arbitrarily require him, as a common carrier and lessee of the said railroad, to transport logs at an unreasonable and unjust rate of freight thereon, and the said complainant avers that that is attempted to be done by the order of the said defendants as Railroad Commissioners of the State of Mississippi.

The prayer of the bill is that an injunction be issued directed to the defendants and each of them, enjoining and restraining them, their agents, attorneys and all others under their authority, from interfering with the tariff or charges of the complainant on logs on his said line of railroad known as the Batesville Southwestern Railroad, or with the operation, control or income of the said railroad, or any part thereof, under and by virtue of Chapter 139 of the Mississippi Code of 1906, and command that they, and each of them, do absolutely desist and refrain from issuing, promulgating and enforcing any

revision of complainant's tariff, or from instituting or authorizing any prosecution of suits for recovery of penalties under said law, as to complainant or his said railroad or employees, and that upon a final hearing, complainant prays that the injunction be made perpetual.

There is also a prayer for general relief in equity.

When this bill was filed on September 19th, 1913, the Honorable Henry C. Niles, Judge of the District Court for the Southern District of Mississippi, entered an order setting the cause down for hearing on an application for a preliminary injunction at Birmingham, Alabama, on the 3rd day of October, 1913, and requesting the Honorable David D. Shelby, of Huntsville, Alabama, a Judge of the Circuit Court of Appeals, and Honorable W. I. Grubb, of Birmingham, Alabama, a Judge of the District Court within that circuit, to sit with him at the hearing. This order was entered on September 19th, 1913. (Page 51 of the record.)

The answer of the defendants denies all of the affirmative averments of the original bill and sets up a special defense to the original bill, these facts:

That the complainant, R. J. Darnell, and R. J. Darnell, Incorporated, and the Illinois Central Railroad Company entered into an unlawful, corrupt

and fraudulent scheme of building a line of railroad from the Town of Batesville, Mississippi, extending in the direction of the Town of Charleston, Mississippi; that said R. J. Darnell and the said R. J. Darnell, Incorporated, are and were but the straw men, figureheads, dummies and plaster in the hands of the said Illinois Central Railroad Company, in carrying out its illegal and unlawful designs touching the construction of said railroad; that under the terms of the freight tariff promulgated by the Illinois Central and Yazoo & Mississippi Valley Railroad Company, the latter being a subsidiary line of the Illinois Central Railroad Company, prior to August 16th, 1913, and re-affirmed in Tariff 629-C, its rate on logs, with certain exceptions, from the station of Aldens to the City of Memphis, was 1 3-4c per hundred pounds with a reshipping rate of 1 1-4c, which would equal in foot rate the rate of $1.75 per thousand feet, with a re-shipping rate of $1.25 per thousand feet, and that the distance from the said station of Aldens to the said City of Memphis is 16.69 miles, and that the said Illinois Central Railroad Company under said tariff had in effect a rate on logs over its Y. & M. V. lines from the station of Walls to the City of Memphis a rate of 1 3-4c per hundred pounds, which is equivalent to a rate of $1.75 per thousand feet, with a re-shipping rate of $1.25; that the distance from the said station of Walls to the said City of Memphis, Tennessee, is fifteen miles; that the rate so

fixed and established from the station of Walls and the said station of Alden to the City of Memphis were rates fixed and established by the Illinois Central Railroad Company, without any compulsion on the part of the Railroad Commission of the State of Mississippi, or any other railroad commission; that the Illinois Central Railroad Company, under the said tariff 629-C had in effect a rate on logs from the Town of Oakland to the City of Memphis, Tennessee, of 4 3-4c per hundred pounds, which was equivalent to $4.75 per thousand feet, with a re-shipping or re-billing rate of $4.00, which would make the net rate on logs to be shipped into Memphis, manufactured and re-shipped, $4.00 per thousand feet; that the local rate from Batesville to Memphis, Tennessee, as per said tariff 629-C, on logs was 4 1-4c per hundred pounds, with a re-shipping rate of 3 1-2c per hundred pounds, making a net rate of 3 1-2c per hundred pounds on logs shipped into Memphis for manufacture into lumber and re-shipment; that if the Batesville Southwestern Railroad had been built and constructed and operated in the name of its true owner, the Illinois Central Railroad Company, it, the Illinois Central Railroad Company, could not, without doing violence to its said tariff 629-C, and without discriminating against points on the Batesville Southwestern Railroad, have charged a higher rate than that mentioned from Batesville to Memphis, Tennessee, but that this conspiracy was en-

tered into between the complainant and the Illinois Central Railroad Company, the Illinois Central Railroad Company could, by this subterfuge, collect a very much higher rate from points on the Batesville Southwestern than it could from the station of Oakland, Mississippi, or the same distance as the point on the Batesville Southwestern.

The answer further charges that the Illinois Central Railroad Company is the true owner and that the complainant and the corporation were mere construction companies, under the terms of the contracts which have been mentioned as exhibits to the original bill.

The answer further charges that R. J. Darnell, Incorporated, and R. J. Darnell are one and the same thing, because R. J. Darnell is the principal stockholder and the practical owner of the corporation, and it further charges that there is merchantable timber, and logs, other than oak and hickory, adjacent to the right of way of the railroad operated by the complainant, and that this timber would be shipped over the railroad but for the prohibitive tariff on logs which had been established by the complainant on April 27th, 1912.

And it further charges that gum, red oak and other timber exceeds in quantity the oak and hickory logs adjacent to the railroad, and that the tariff

which was established by the complainant was prohibitive on shipments of logs of this character of timber.

The charter of the Batesville Southwestern Railroad Company was introduced in evidence on the trial of the application for an injunction pendente lite and may be found on pages 69 to 73 of the record.

There were affidavits introduced in evidence, both for the complainant and the defendants, but they are not shown in the record because the opinion of the Court on the application for an injunction pendente lite sums up the evidence which was before the Court on that trial.

The opinion of the Court on the application for an injunction pendente lite may be found on pages 73 to 77, inclusive, of the record. This opinion holds that the only question for determination is whether Darnell, Lessee and Operator of the Batesville Southwestern Railroad, will receive a fair return on the reasonable value of the property devoted by him to the public use if the rates which were fixed and established by the Railroad Commission of Mississippi on logs are made effective.

In the opinion, the Court holds that the charge of one-twentieth of the amount expended by him as an annual rental made by the complainant in his original bill as an operating expense, was an improper

charge, and this holding of the Court is assigned as error on this appeal.

The Court found that for the fiscal year ending June 30th, 1913, the gross earnings of the railroad were $15,553.01, and that the operating expenses, exclusive of the one-twentieth of the cost of construction which had been charged as an annual rental in the original bill, was $4,296.20, leaving a net earnings of $11,256.81.

The figures stated by the Court are based on the rates which were established by the complainant on April 27th, 1912, and the Court decides that the only inquiry is whether the net operation income of $11,256.81 is a fair return on the property employed in the earning of it; that that depends upon what the property so employed consists of and the value of it.

The Court then decides that the value of the railroad is approximately $150,000.00, or about $10,000.00 per mile; this decision being made in face of the fact that the affidavit of Elliott Lang, the Auditor and Traffic Manager of R. J. Darnell, Lessee, which was before the Court on that hearing, that the complainant expended $163,467.67 for construction and equipment. The Court, in its opinion, takes from that amount an item of $12,687.04, designated as "*other expenditures*," and shown in the itemized affidavit of the Auditor. The Court

then finds that on this corrected valuation, eliminating the annual rental charge, the earnings of the road for the fiscal year ending June 30th, 1913, were 7½% on the corrected valuation, and that if the rates which were established by the Railroad Commission of Mississippi were put into effect, the net operating income of the road would have been $3,700.00 or about 2½% of the valuation as fixed by the Court. The Court, in its opinion, holds that this would not have been a fair or reasonable return upon the amount invested, but that from affidavits which were presented to the Court on that hearing, it appeared that if the rates which were established by the Railroad Commission were put into effect by the complainant on the railroad, there would be an increase in the business of the road and that increase would be sufficient to allow the complainant to earn a fair return upon his investment.

The Court holds that the entire question of rates should be solved without reference to the question of the interest of the complainant in the railroad or the reimbursement to him of the amount expended by him in the construction, and eliminates entirely the fact that after twenty years the entire railroad and its equipment becomes the property of the Illinois Central Railroad Company and the interest of the complainant ceases.

The Court further held in its opinion that from the comparative rates on logs on other railroads in the various sections of the United States, as shown by Exhibit "I" to the bill, it appears that from that the rates on other railroads are higher, but the conditions on those roads are not shown to be similar to the conditions on the railroad operated by the complainant.

In the opinion the Court states as follows, to-wit:

> "If the commission rates, when enforced, will yield the plaintiff no more than 2½% on his investment, it would seem that they are too low. The fact that they have yielded only that amount on the amount of business actually handled in 1912 under plaintiff's voluntary rates is, however, not conclusive. The defendant's contention that these rates were prohibitive as against all shippers except plaintiff or his incorporation, and that other timber land owners would cut and ship logs under the Railroad's Commission's rates, if they had a chance under such reduced rates, and would so greatly increase the volume of business transported as to make it remunerative under the lower rates, seems plausible. At least, it cannot be said in advance of a 'period of experiment under the lower rates that such would not be the case.' If no business was developed by the lower rates, then if the plaintiff is, as alleged, the party most interested in the incorporation that has heretofore cut and shipped the logs, no harm would be done plain-

tiff, since what he lost in operating the railroad he would regain in the additional profit on the logging business, due to reduced rates. The interest of the plaintiff is both in the logging business and the railroad also impairs the value of the usual inference that the operator of the railroad would so operate it as to develop all the business that could be developed and would make the greatest possible profit. It is clear that the interest of the plaintiff in the railroad may be counterbalanced by his interest in the timber that he already owned, and that he may yet desire to acquire at lower figure obtainable because of its inaccessabilities to proper railroad facilities and rates. So it is true that the amount actually expended by plaintiff to build the railroad in this instance may be no true index of its fair value, since his timber interests may have induced him to build a railroad that could not be expected to be operated profitably as a purely transportation proposition."

In accordance with this statement made by the Court, the Court holds that it would be better not to interfere with the commission made rates until the final hearing, so as to afford a period for experiment as to their power to develop new business in volume sufficient to make the commission's rates remunerative, and holds that in view of the fact that the plaintiff will be partly reimbursed by any loss he might have from the enforcement of the reduced rates because of his interest in the corporation.

The Court holds finally that there is no showing of confiscation, as required by the rate case of SIMPSON VS. SHEPHERD, and other recently decided cases by this Court and denies the application for an injunction pendente lite.

The decree of the Court denies the application for an injunction pendente lite.

(Record, Pages 77 and 78.)

This decision and decree of the Court was rendered on November 10th, 1913, and on the —— day of June, 1914, the case came up for final hearing in Vacation at Oxford, in the Northern District of Mississippi, before the Honorable Henry C. Niles, District Judge, and on this trial there was introduced evidence for the plaintiff and for the defendants.

ABSTRACT OF THE EVIDENCE TAKEN ON THE FINAL HEARING OF THE CAUSE ON THE —— DAY OF JUNE, 1914.

The Batesville Southwestern Railroad is a railroad extending from Batesville in a Southwestern direction for about 17 miles, the entire railroad being wholly within the State of Mississippi. The railroad was built jointly by the Illinois Central Railroad Company and R. J. Darnell; being built under a contract of June 7th, 1910, which contract is in evidence, and under supplemental contracts to that contract, which are in evidence.

(Record, Pages 79-94-95-96.)

Under the various contracts between R. J. Darnell and the Illinois Central Railroad Company, R. J. Darnell is to pay for certain specified parts of the construction of the railroad, and the Illinois Central Railroad Company is to pay certain parts and to furnish certain materials.

The total amount which was expended by R. J. Darnell in the construction of the railroad, or such part of it as he was required to pay for under his contract with the Illinois Central Railroad Company, was $146,302.20. (Record, pages 79 and 80.)

The total amount which was expended by the Illinois Central Railroad Company under the contract was $98,000.00; making a total cost for the building and construction of the railroad of $244,302.20. (Record, page 95.)

This railroad had just been completed prior to the trial in the lower Court.

The construction of the railroad began about June, 1911.

While the railroad was being constructed by R. J. Darnell and the Illinois Central Railroad Company, the Batesville Southwestern Railroad Company was organized as a corporation in the State of Mississippi, and, after it was organized the Batesville Southwestern Railroad Company, by its of-

ficers, also entered into a contract with R. J. Darnell and the Illinois Central Railroad Company, on July 6th, 1912, in which contract it was provided that the provisions of the previous contracts should inure also to the benefit of the Batesville Southwestern Railroad Company, and that it should be considered as a party to all of the preceding contracts. (See contract of July 6th, 1912, Record, pages 32 and 69.)

In the contract between R. J. Darnell and the Illinois Central Railroad Company, after the expiration of 20 years from the date of the first contract, the railroad is to become the property of the Illinois Central Railroad Company, and the Illinois Central Railroad Company is to pay R. J. Darnell nothing for surrendering the road to it. The amount, therefore, expended by R. J. Darnell in the construction of this railroad will be lost to him at the expiration of the twenty years. (See contract of June 7th, 1910, Record, page 18.)

R. J. Darnell began operating the railroad, as Lessee, as a common carrier in March, 1912, and when he began the operation of the railroad as a common carrier, he established a tariff, fixing the rate on logs from the different points on the railroad to Batesville, Mississippi. In establishing the rates to be charged on logs, he took the rate which had been fixed by him in an agreement with C. L. Sivley

and James Stone, of date May 4th, 1911. (See testimony of Elliott Lang, Record, page 82.)

The tariff which was prepared by him was filed with the Interstate Railroad Commission, but was not filed with the Mississippi Railroad Commission until called on by the Secretary of the Commission, which was in May 1913.

On July 23rd, 1913, the Railroad Commission of Mississippi entered an order reducing the rates on logs which had been prepared and filed by the lessee about 50% of what they were, as fixed by him.

(See order of Railroad Commission, Record, Page 46, and copy of tariff, Record, Page 42, and testimony of Elliott Lang, Record, Page 82.)

It is the enforcement of this order that an injunction is sought to restrain.

The net operating revenue received by the lessee from the time he first began operating the railroad as a common carrier, up to June 30th, 1913, was $9,397.39. This amount was received from the operation of the railroad for more than a year under the rates as fixed by the complainant.

(Record, Page 83.)

After the decision of the Lower Court on the application for a temporary injunction, the complainant put into effect the rates which had been estab-

lished by the Mississippi Railroad Commission on logs on all shipments of logs wholly intra-state, and it was shown that from the time these rates were put into effect, to-wit: September 10th, 1913, up to March 31st, 1914, that the net revenue for that nine (9) months showed a deficit of $495.85, and that there had been no increase in business over what it had been before those rates were put into effect. (See testimony of Elliott Lang, Record, Pages 83 and 84.)

It was shown that the interest of R. J. Darnell in the corporation known as "R. J. Darnell, Incorporated," was that he owned one per cent (1%) of the capital stock, which was $100,000.00, and that he was operating the railroad as an individual, and that the corporation had bought the standing timber on the land belonging to R. J. Darnell, and that the only interest that he had in the timber business was his one per cent (1%) of the capital stock. (See testimony of Elliott Lang, Record, Pages 97 and 98.)

A comparison of the rates on logs as established by the Commission for this railroad with the rates on logs established for other railroads of like character, will show that the rates as established for this railroad are considerably lower than the rates established for other railroads of like character. (See testimony of Elliott Lang, Record, Pages 85 and 86.)

It was further shown that this Railroad is a standard road and is in first class condition and that the traffic on the said road consists, principally, in out-going shipments of logs; the in-bound traffic being almost nothing, and the entire operating expenses of the road were incurred in transporting shipments of logs in car load lots. (See testimony of Elliott Lang, R. J. Darnell, Griffith and several other witnesses.)

DEFENDANTS' TESTIMONY.

The defendants introduced several witnesses, but the testimony of the witnesses introduced for the defendant shows that it is merely speculative on the part of the witnesses, and there is nothing in any of the testimony of the defendants' witnesses to show that the road was of less value at the time of the trial than the amount which was expended by the complainant, R. J. Darnell, and the Illinois Central Railroad Company in the construction of it. Several witnesses gave it as their opinion that the rates which had been established by the Railroad Commission of Mississippi were reasonable rates; but an inspection of all of the testimony of the defendants, on pages 101 to 111, inclusive, of the record, will show that there is no contradiction of the material facts as shown in the plaintiff's testimony.

Although the defendants in their answer to the original bill alleged that the Batesville Southwestern Railroad and R. J. Darnell, Incorporated, were mere figureheads and straw men in the hands of the Illinois Central Railroad Company, and that the Illinois Central Railroad Company was really the operator of the Batesville Southwestern Railroad, there was not any proof introduced on behalf of the defendants which would in any way tend to establish these allegations of the answer. The complainant, however, introduced testimony which showed conclusively that there was no secret agreement or understanding between the Illinois Central Railroad Company and R. J. Darnell, and R. J. Darnell, Incorporated, and that the only agreements between those parties were the agreements which were Exhibits to the original bill in this case. This was shown by the officials of the Illinois Central Railroad Company and by R. J. Darnell and Elliott Lang, the auditor of his railroad. (See testimony W. L. Park, Record, Page 94; testimony of A. S. Baldwin, Record Page 95; testimony of R. J. Darnell, Record, Page 96; testimony of Elliott Lang, Record, Page 78.)

This case was decided on the 7th day of December, 1914, the decree of the Court, omitting the formal parts, is as follows:

This day this cause coming on to be heard on Bill, Answer and oral proof, taken by agreement of counsel before the Court, and the Court after partially

considering the same, took said cause under advisement, to be further heard and determined in vacation, and now, having fully considered the same, the Court doth find that the complainant is not entitled to the relief sought in his Bill; that the intra-state rate established by the Mississippi Railroad Commission is a reasonable rate, and that the same should be enforced.

It is, therefore, ordered, adjudged and decreed that the Writ of Injunction prayed for in the Bill be denied, and that Complainant's Bill be dismissed.

It is further ordered and adjudged that the complainant, R. J. Darnell, pay all costs incurred in this behalf, for which execution will issue at law.

Ordered, adjudged and decreed, this the 7th day of December, A. D. 1914. To the action of the Court in denying the injunction and dismissing the bill, complainant excepts and prays an appeal.

The Assignment of Errors for the complainant and appellant, omitting the formal parts, is as follows, to-wit:

And now, on this, the.....day of March, A. D. 1915, came the plaintiff, R. J. Darnell, by his solicitors, Montgomery & Montgomery, and says that the decree entered in the above cause on the 7th day of December, A. D. 1914, is erroneous and unjust to the plaintiff.

First. Because the Court erred in entering the said decree and holding that the rate established by the Mississippi Railroad Comimssion for the line of railroad operated by the plaintiff, R. J. Darnell, as lessee, is a reasonable rate and that the same should be enforced.

Second. Because the Court erred in adjudging and decreeing that the writ of injunction prayed for in the bill be denied and that the bill be dismissed.

Third. Because the decree of the Court is contrary to the evidence in this: the evidence showed that the rate which was established by the Mississippi R. R. Commission on July 23, 1913, for the Batesville Southwestern Railroad, which was operated by the plaintiff, R. J. Darnell, as Lessee, was a rate which if enforced on said railroad by the said plaintiff as lessee, as ordered in the said order of the said Railroad Commission, would be confiscatory and in violation of the Fourteenth Amendment of the Constitution of the United States, and the Court erred in holding that under the evidence the rate was a reasonable rate.

Fourth. Because the Court, on the application for a temporary injunction erred in holding that the plaintiff, R. J. Darnell, was not entitled to make a charge of one-twentieth (1-20) of the amount alleged to have been expended by him in the construction of the Batesville-Southwestern Railroad, as an-

nual rental and as an operating charge and the Court erred in not allowing that annual rental to be considered in figuring the net operating revenue expended by the said railroad.

Wherefore, the plaintiff prays that the said decree be reversed and the District Court directed to enter such decree as is prayed for by the original bill in the cause, or that the Supreme Court shall reverse and render a proper decree on the record.

BRIEF AND ARGUMENT.

The Fourth Assignment of Error.

The fourth assignment of error is:

> "Because the Court on the application for a temporary injunction erred in holding that the plaintiff, R. J. Darnell, was not entitled to make a charge of one-twentieth (1-20) of the amount alleged to have been expended by him in the construction of the Batesville Southwestern Railroad as an annual rental and as an operating charge, and the Court erred in not allowing that annual rental to be considered in figuring the net operating revenue expended by the said railroad."

The Court, in its opinion on the application for a temporary injunction, held that the question as to whether the rates on logs in carload lots which was established by the Railroad Commission of Mississippi, in its order of June 23, 1913, was confiscatory and in violation of the Fourteenth Amendment of the Constitution of the United States, should be solved without reference to the question of the interest which the plaintiff, R. J. Darnell, had in the railroad or the reimbursement to him of the amount expended by him in construction.

(Record, page 74.)

The Batesville Southwestern Railroad was constructed in accordance with a contract entered into on June 7, 1910, between the Illinois Central Railroad Company and R. J. Darnell, plaintiff, and R. J. Darnell, Incorporated, and under contracts between the said Illinois Central Railroad and the said R. J. Darnell, plaintiff, and R. J. Darnell, Incorporated, and the Batesville & Southwestern Railroad Company, which were supplemental contracts to the original contract.

(Record, page 94 and page 81.)

Under the terms of that contract of June 7, 1910, after the railroad was built, as provided therein, the plaintiff, R. J. Darnell, was entitled to operate that railroad as a common carrier of freight for twenty (20) years after that date. At the end of that time, the interest of the plaintiff in the said railroad ceased and it became the absolute property of the Illinois Central Railroad Company, and the amount which had been expended by the plaintiff in the construction of the said railroad under the terms of the said contract and supplemental contracts thereto, was not to be repaid to him by the Illinois Central Railroad Company or by anybody else. (Contract of June 7, 1910, Record pages 29 to 35, incl.)

The decision of the Court on the application for a preliminary injunction complained of in the Fourth Assignment of Errors was followed by the Court on

the trial of the cause on the question as to whether a permanent injunction should be granted, and it was argued to the Court, after all the proof was introduced on behalf of the plaintiff and the defendants on the trial on the question as to whether a permanent injunction should be granted or not, that the Court had erred in its opinion on the application for a temporary injunction, and it was insisted that after the proof had been taken, which appears in the record as having been taken on the trial, the proof showed conclusively that the Court had erred in its opinion on this matter.

The case at bar is a case somewhat different from the cases which have been recently decided by this Court on the question as to whether rates which have been established by the commissions of the various States to be in effect on various railroads are confiscatory as to those railroads or not, because in the case at bar, the interest of the plaintiff in the railroad on which the Railroad Commission of Mississippi has ordered that he put into effect the rates on logs in carload lots which was established by it on the 23d day of July, 1913, will cease at the end of 20 years, and the amount which has been expended by the plaintiff is not to be repaid to him by anybody. His interest in the railroad, therefore, is not an interest which is similar to the interest of the railroad companies in the various decisions of this Court which will be referred to in this brief;

but, we contend that the opinions of this Court conclusively show that the interest of the plaintiff in this railroad could not rightfully be disregarded by the Court, either on the application for a temporary injunction or on the trial of the question as to whether a permanent injunction against the rates which had been established by the Mississippi Railroad Commission were confiscatory or not.

This Court held in the case of SIMPSON VS. SHEPHERD, known as "The Minnesota Rate Case," and reported in the United States Supreme Court Reports, Volume 230, page 350, 57 Law Ed. 1511, citing the case of SMYTHE VS. AMES, 159 U. S., page 546, as follows, to-wit:

> "That in order to ascertain that value (speaking of the value of the property used for the benefit of the public) the original cost of the construction; the amount expended in permanent improvements; the amount and market value of its bonds and stock; the present, as compared with the original cost of construction; the probable earning capacity of the property under rates prescribed by statute and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value

of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

The case of SIMPSON VS. SHEPHERD, supra, was cited and approved in all of the more recent decisions of this Court.

KNOTT VS. CHICAGO, B. & Q. R. R. CO., 57th Law Edition, 1604, 230 U. S., 525.

SOUTHERN PACIFIC R. R. CO. VS. CAMPBELL, 57th Law Edition, 1610, 230 U. S., 537.

PORTLAND R. L. & P. Co. VS. RAILROAD COMMISSION OF OREGON, 57th Law Edition, 1248, 229 U. S., 397.

NORFOLK & WESTERN RAILROAD COMPANY VS. W. S. CONNELLY, ATTORNEY-GENERAL OF THE STATE OF WEST VIRGINIA, 59th Law Edition, page 745; 236 U. S., 605.

NORTHERN PACIFIC RAILROAD COMPANY ET AL. VS. STATE OF NORTH DAKOTA ET AL., 59th Law Edition, page 735; 236 U. S., 585.

Other leading cases holding the same principle:

SMYTHE VS. AMES, 169 U. S., 466; 18 S. C. Rep., 418; 42d Law Edition, 819.

COVINGTON AND L. T. R. R. CO. VS LANDFIELD, 154 U. S., 587; 17 S. C. Rep., 189; 41 Law Edition, 560.

REGAN VS. FARMERS LOAN & TRUST CO., 154 U. S., 362; 14 S. C. Rep., 1047-1062; 38 Law Edition, 1014-1030.

(See this last mentioned case especially.)

It was held in the case of SMYTHE VS. AMES, supra, and approved in the "Minnesota Rate Case," supra, that in determining whether the constitutional right that the private property of the railroad company could not be taken by the public for its use without just compensation, that each case must rest upon its own special facts and the facts of the case at bar are facts which are peculiar to this very case; and the decision of the Court in its opinion on the application for a temporary injunction and the ratification of that decision by the decree which is complained of on this appeal, is clearly error in view of the facts of this particular case.

Under the laws of the State of Mississippi, it is lawful for a railroad corporation to lease to an individual, or to another corporation, its railroad and all of its property, franchises, rights, privileges, powers and immunities, provided they are not parallel or competing lines, for a term of years, as was done in the case at bar.

Code of Mississippi of 1906, Section 4090.

It being lawful for the plaintiff to lease from the Illinois Central Railroad Company the line of railroad known as the Batesville Southwestern Railroad (and the contract under which the said Batesville Southwestern Railroad was constructed and is being operated by the plaintiff is in effect a lease contract for a term of 20 years), it surely cannot be said that in considering whether a tariff of rates on logs in carload lots for use on the said railroad was confiscatory or not, that the interest of the plaintiff was not entitled to be considered. If that could be said, although it was lawful for a party to lease from a railroad company all of the rights, powers, privileges and franchises of that railroad company, yet, unless he was entitled to have the fact that he had leased that railroad considered in a case like the instant case, then the statute of the State of Mississippi which allows an individual or a corporation to lease a railroad and its franchises, rights, powers, etc., could never be put into effect and taken advantage of.

In the case at bar, the rates which are complained of as being confiscatory are rates on logs in carload lots; and shipments of logs in carload lots is practically the only traffic which goes over the said line of railroad, and the rates which are complained of are rates which were established by the Railroad Commission of Mississippi on the one commodity which is practically the only commodity on which

the plaintiff, as lessee and operator of the said railroad, can receive any return upon his investment. (Record, page 98.)

The entire operating expenses of the railroad is practically incurred in the hauling of logs in carload lots from points on the railroad into Batesville, Mississippi, the rate on which, as established by the Railroad Commission of Mississippi, is complained of as being confiscatory.

The plaintiff in the construction of the Batesville Southwestern Railroad, in accordance with the contracts which have been referred to, has expended the sum of $146,302.20, and at the end of 20 years, this amount will be lost to him entirely and his interest in the railroad will cease, and the Illinois Central Railroad Company will become the owner in fee of the railroad; and even though the plaintiff received a legitimate rate of interest on his investment, yet, at the end of 20 years he would still lose the principal of his investment unless allowed to make a charge of one-twentieth of the amount expended by him as an annual rental and as an operating charge. The Court has held, in its opinion on the application for a temporary injunction, and approved that opinion by the decree which is complained of on this appeal, that he is not only not allowed to make this charge of one-twentieth of the amount expended by him as an operating charge,

but he cannot even have the fact that at the end of 20 years, the large amount which has been expended by him in the construction of the road is not even to be considered in considering whether the rates fixed on practically the only commodity which is hauled over the line of railroad, operated by him as lessee, by the Railroad Commission of Mississippi are confiscatory or not.

We submit that this holding of the Court is, in the light of the authorities which we have cited, clearly error, and that even though the Court should be of the opinion that the plaintiff was not entitled to charge one-twentieth of the amount expended by him in the construction of the road as an annual rental and as an operating charge, yet, under the decisions of this Court, it was clearly error to hold that the interest of the plaintiff in the railroad was a matter which could not be considered at all.

THE RATES WHICH WERE ESTABLISHED BY THE RAILROAD COMMISSION OF MISSISSIPPI ON JULY 23, 1913, FOR LOGS IN CARLOAD LOTS ARE CONFISCATORY UNDER THE FACTS.

Conceding for the sake of this argument that the Court did not err in holding that the interest of the plaintiff in the said railroad was a matter which should not be considered in determining whether the rates which were established by the Railroad

Commission of Mississippi on July 23, 1913, on logs in carload lots, and ordered by that body to be put into effect on the Batesville Southwestern Railroad by the plaintiff as lessee, was correct (but we still insist that it was error), yet, the facts of this case, construed in the light of the recent decisions of this Court which have been cited above in this brief, show conclusively that the rates which were established by the Railroad Commission of Mississippi as aforesaid, and ordered to be put into effect over the line of railroad operated by the plaintiff, if they are put into effect by the plaintiff, it will amount to the taking of the property of the plaintiff for public purposes without due compensation and will be in violation of the Fourteenth Amendment to the Constitution of the United States.

The statute of Mississippi provides for a Board of Railroad Commissioners and their duties in supervising railroads.

Chapter 139 of the Code of Mississippi of 1906.

Section 4842 of the Code of Mississippi of 1906 provides for the submission of tariffs to the Commissioners, with power in the Commissioners to revise such of them as are not subject to exclusive regulation of Congress, etc.

See also cases cited in the annotations to this section.

This law has been held by the Supreme Court of the State of Mississippi to be constitutional, and that ruling affirmed by the Supreme Court of the United States, on the ground that a railroad corporation is a creature of the State and the State can regulate its own creatures.

Stone vs. Y. & M. V. R. R. Co., 67th Miss., 607.

But it is also held by the Mississippi courts that the rates fixed by the Commission are only prima facie correct, and are not subject to absolute control of the Commission. The courts say this creature of the State must submit to the lawful authority of its creator, but the reasonableness of the rates are subject to be reviewed by the courts.

The final test of the reasonableness of the rates is not with the Commission, but with the Judiciary.

Stone vs. N. J. & C. R. R. Co., 67th Miss., 647.

The case of Stone vs. Y. & M. V. R. R. Co. and Stone vs. N J. & C. R. R. Co., supra, were cited and approved by this Court in the case of STONE VS. FARMERS' LOAN & TRUST CO., 116 U. S., 307; 6th S. C. Rpts., 334-388-1191. That case was the initial Mississippi Rate Case decided by this Court. This Court, in that case, held that the power to regulate railroad rates is not unlimited. The power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense

of regulating fares and freight, the State cannot require a railroad to carry persons without reward. Neither can it do that which amounts to taking private property for public use without just compensation, or without the process of law.

In a very late case the Mississippi Supreme Court, speaking of this same subject, say:

> "Turning now to the statute creating the railroad commission, we find that it is a mere administrative agency, having nowhere been given the power to apply the law to a state of facts and to make a final declaration of the consequences which follow; all of its orders being subject to review by the Court and, when called in question, being only prima facie correct. Code Section 4836; Western Union Tel. Co. vs. Railroad Commission of Mississippi, 74 Miss. 80; 21st Southern, page 15; Mississippi Railroad Commission vs. Illinois Central Railroad Co., 203 U. S. 335, 27th S. C. 90, 51st Law Ed. 209."

In Western Union Tel. Co. vs. Railroad Commission of Mississippi, it was said that the findings and determinations of matters committed to the Railroad Commission by it are not final and conclusive and were never so intended by the statute. It is a mere administrative agency, although in some respects it exercises quasi judicial power. But, at least, the reasonableness and lawfulness of its determinations is left subject to judicial inquiry and decision. If a

common carrier, required by the Commission to do an act, is of opinion that the requirement is in violation of its legal rights, it may refuse compliance and if, upon judicial inquiry, its contention is supported, it is not punishable or liable for a failure to comply. But, it takes the risk of coming under all penalties and liabilities declared by the statute, if, upon such inquiry, the courts upheld the action of the Commission. The statute, in express language, so provides. Section 4284 of the Code of Mississippi, 1892 (4636 of Code of Mississippi, 1906) declares that all findings of the Commission and determinings of every matter by it shall be in writing and proof thereof shall be made by a copy of the same, duly certified to by the Secretary, under the seal of the Commission, and wherever any matter shall be determined by the Commission in the course of any proceedings before it, the fact of such determination, duly certified, shall be received in State Courts by every officer in civil cases "as prima facie evidence that such decision was right and proper." Citing Stone vs. Y. & M. V. R. R. Co., 67th Miss. 607; 52nd Am. Rep. 193.

Stone vs. Farmers Loan & Trust Co., 166 U. S. 307, 6 Sup. Ct. 334-338-1191, 29th Law Ed. 636, and quoting therefrom.

See I. C. R. R. Co. vs. Dodd, 61st So. 743.

The Minnesota rate case is the leading case. In that case, this Court, in an exhaustive opinion by Mr. Justice Hughes, discussed fully the doctrine which we are contending for, holding that the doctrine is fully established, that the State cannot prescribe interstate rates, but can prescribe reasonable intra-state rates throughout its territory. Citing Baltimore & Ohio R. R. Co. vs. Maryland, 21st Wall. 456-470-471, 22nd Law Ed. 678-683-684.

The Court say:

> "The inquiry is whether the State has overstepped the constitutional limit by making the rates so unreasonably low that the carriers are deprived of their property without due process of law and denied the equal protection of the laws. The property of the railroad corporation has been devoted to a public use. There is always the 'obligation springing from the nature of the business in which it is engaged which private exigency may not be permitted to ignore, that there shall not be an exorbitant charge for the services rendered.' But the State has not seen fit to undertake the service itself, and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title, but to the right to receive just compensation for the service given to the public."

Citing a long list of cases from the Supreme Court of the United States, to all which we respectfully call

the Court's attention as being in point with the case at bar.

> "In determining whether that right shall not be denied, each case must rest upon its own special facts."
>
> "The basis of calculation is the value of the property used for the purpose."

Smythe vs. Ames, 169 U. S. 546, 42nd Law Ed. 849, 18 S. C. Rep. 418; or as it was put in San Diego Land & Town Co. vs. National City, 174 U. S. 757, 43 Law Ed. 1161, 19 S. C. Rep. 804:

> "What the Company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public."

Citing San Diego Land & Town Co. vs. Jasper, supra; Wilcox vs. Consolidated Gas Co., 312 U. S. 19-41, 53 Law Ed. 383-295, 29 S. C. Rep. 192, 15 Ann. Cas. 1034.

Applying the facts of the case at bar to the opinions of this Court in the decisions which have been cited and quoted from, the facts as shown by the record are that the investment of the plaintiff in the railroad is $146,302.20, and that added to that amount is the sum of $100,000.00 which was expended by the Illinois Central Railroad Company in the construction of the railroad under the contracts

which have been mentioned herein. (Record, Pages 79, 80 and 95.)

The cost of the construction of the road is, therefore, about $245,000.00, and as the road had just been completed before the trial of the cause in June, 1914, the valuation of the road was, at the time of the trial of this cause, about $245,000.00. There was no evidence introduced on behalf of the defendants which tended, in any way, to show that the road was of less value at the time the cause was tried than the amount which had been expended by the plaintiff and the Illinois Central Railroad Company in the construction.

Although the corporation known as R. J. Darnell, Incorporated, was a party to the contracts which are in the record and which have been mentioned hereinbefore, yet it has no interest in the operation of the railroad, nor did the said corporation expend anything for the construction of the said road, or contribute anything towards the construction and equipment of the road; and when this cause was tried, the interest of the said corporation in the said contracts had been absolutely conveyed by it to R. J. Darnell as an individual; and in the conveyance and in the Minutes of the Board of Directors of the said corporation, the facts which have been stated were acknowledged by that corporation.

(Record, pages 35 to 42 incl.)

It was contended by the defendants and stated by the Court in its opinion on the application for a temporary injunction, that the interest of R. J. Darnell in the Batesville Southwestern Railroad and in the operation of that railroad was practically identical and that the corporation known as R. J. Darnell, Incorporated, being the owner of a large tract of standing virgin timber and being, therefore, a large shipper of logs in car load lots over the Batesville Southwestern Railroad, that the plaintiff, even though he lost in the operation of the railroad, would be partly reimbursed in additional profits due to the reduced rates which the corporation which does the logging and shipping, and in which he was largely interested, will make on its produce.

(Record, Page 77.)

The proof shows absolutely that the interest of the plaintiff in the corporation was that he was the owner of 1 per cent of the capital stock of that corporation and that the capital stock was $100,000.00.

(Record, Pages 84 and 85 and 97.)

There is no proof in the record which contradicts this fact.

The railroad was operated by the plaintiff entirely as an individual; and there was no way in which he could be reimbursed for the large amount which he had expended in the construction of that railroad except in the revenue derived therefrom.

From the time that the plaintiff first began operating the railroad as a common carrier, April, 1912, up until June 30th, 1913, the rates which were in force and effect on logs in car load lots, which was practically the only traffic over the said railroad, for that time, were the rates which had been fixed by the Traffic Manager of the plaintiff and which will be found in the freight tariff which is Exhibit "F" to the original bill in this cause.

Record, page 45. Record, page 83.)

During that period of time, the gross operating revenue of the road was $13,284.74. The net operating revenue was $9,397.39. In figuring the net operating revenue there is no charge made in the operating expenses for rental. The road, therefore, earned 3.8% on the value of the road from the time it began operating up until June 30th, 1913, discarding from consideration the interest that the plaintiff had in the railroad.

(Record, Page 83.)

It is to be noted that this amount was earned by the plaintiff in the operation of the railroad, not under the rates which were established by the Commission, but under the rates which were established by him through his Traffic Manager, which were about 50% higher than the rates which were established by the Railroad Commission of Mississippi. If the rates which were established by the Railroad

Commission of Mississippi had been put in force and effect on the railroad which was operated by the plaintiff during the period of time which has been mentioned, instead of earning 3.8% on the valuation of the road, there would have been a very large loss to the plaintiff on the valuation of the road, and, even on a valuation based upon the amount invested by plaintiff in the construction and equipment of the road, the amount which would have been earned by the plaintiff in the operation of the railroad, over and above the operating expenses, would have been such a small per cent that it would have amounted to confiscation in violation of the 14th Amendment to the Constitution of the United States.

For the three months ending September 30th, 1913, the plaintiff earned, in the operation of the railroad, over and above the operating expenses, the sum of $4,373.31. (Record, Page 84). This earning was made when the plaintiff had in effect on the railroad the rates which had been established by him on logs in car load lots and would have been a fair amount to have been earned by him on the value of the railroad and on the amount which had been expended by him, but, if he had had in effect the rates which had been established by the Railroad Commission of Mississippi, which were about 50% lower than the rates which had been established and promulgated by him, his earnings would have been so small as to have amounted to confiscation.

In this brief, in argument, we have fixed the amount expended by the plaintiff in the construction of the road at about $145,000.00 and the total valuation of the road at $245,000.00. We have done this because we contend that $245,000.00 is the true amount which was expended in the construction of the road and we submit that the Court in its opinion on the application for a temporary injunction, which opinion was clearly followed in the final decree rendered in this case, clearly erred when it found in its said opinion that the value of the road was $150,000.00. (Record, pages 74 and 75). At the time that the opinion on the aplication for a temporary injunction was rendered there was no proof before the Court showing how much was expended by the Illinois Central Railroad Company in the construction of the road, but the only proof before the Court showed that the plaintiff had expended the sum of $163,467.67. The Court eliminated an item of $12,687.04, designated "Other Expenditures." It is therefore clear that in connection with the testimony taken on the trial of this case at the June Term that the valuation of $150,000.00, as found by the Court in its opinion as aforesaid, was an error because the undisputed evidence taken at the trial at the June Term after the opinion had been rendered on the application for a temporary injunction, shows that the Illinois Central Railroad Company expended the sum of $100,000.00 in the construction of the rail-

road, (Record, page 95); that the plaintiff expended of his own money in the construction of the road, the sum of $146,000.00 (Record, page 80), and the item of $12,687.04, designated as other expenditures, which the Court in its opinion held was not a proper charge until it had been shown for what it had been expended, was a proper amount to be allowed in the construction because the testimony taken on the trial shows for what that sum was expended.

The witness, Elliott Lang, states for what that item designated as "other expenditures" was expended as follows:

> "To this account is charged organization expenses, including payment of necessary fees, the cost of printing stocks and bonds, payments to trustees, expenses of executions, of officers, of the record, expenses of the various salaries and reports of general officers when read, and all items of a special and incidental nature which cannot be properly charged to any other account."

We, therefore, submit that the Court erred in its opinion on the application for a temporary injunction, in fixing the valuation of the road at $150,000.00 when that opinion is construed in connection with the facts which were proven on the trial of this case on the application of a permanent injunction and that, therefore, the Court also erred when its opinion is

construed in connection with the proven facts in holding the plaintiff would receive 7½ per cent. on his investment, because the said valuation as proven is about $100,000.00 more than the valuation as fixed by the Court in its said opinion, and the earnings of the road were shown to be about the same as were shown to the Court before it rendered its opinion.

Up to March, 1914, the railroad had been practically in the course of construction, and although it had hauled freight for various parties prior to that time, it was not thrown open and trains were not operated on it regularly until then. The amount of the operating expenses of the road up to that time were in a large part charged up to the cost of construction, and it is clear that in the future the operating expenses of the road will be considerably larger than they have been before this case was tried in June, 1914. Prior to March, 1914, most of the traffic of the road which was handled was handled by construction forces and no charge was made against operating revenue for maintenance of track and road way, for repairs of equipment, general office expenses, and for depreciation caused by ordinary wear and tear, but the operating expenses of the road will increase after March, 1914, and the facts show that prior to that time the road had hauled the maximum traffic that could be expected during the period of twenty years.

In view of these facts, we submit that if the rate which has been established by the Railroad Commission of Mississippi were put into effect and the gross revenue of the railroad thereby depressed to about one-half of what it has been prior to March, 1914, that the increased operating expenses will bring the net return upon the plaintiff's investment down to such a low figure that it will barely be an appreciable return, in fact it is even doubtful whether it will be any return whatever upon the plaintiff's investment. And it is clear under the decisions which we have cited herein that the plaintiff is entitled to at least receive a reasonable return upon his investment and upon the value of the road.

The facts show that up to the time of the trial, to-wit, June, 1914, that omitting any consideration of the interest of the plaintiff in the road, he has never at any time earned a sufficient amount net to equal 1-20 of the amount which was expended by him in the construction of the road, and that at no time since he began operating the road as a common carrier has he ever earned a fair and reasonable return upon the value of the railroad or upon the amount which has been invested by him.

In its opinion on the application for a temporary injunction the Court compared the rates on the railroad which the plaintiff is operating as Lessee, with rates which were established and put into effect by

the Illinois Central and the Yazoo & Mississippi Valley Railroad Companies. We do not think that it was proper to compare the rates which should be allowed to be charged by the railroad which the plaintiff was operating with such railroads as the two railroads mentioned. They are both large interstate railroads with lines extending through several states, with many trains both pasenger and freight each day, carrying freight in both directions in which the roads run, passing through countries which are famous for producing large and various agricultural products, also minerals and other things susceptible of being hauled by a Railroad Company as freight, while the railroad which is being operated by the plaintiff is a small railroad, only 17 miles in length, running through a country that has practically no population, with no out-going traffic from the town of Batesville whatever, and the only traffic which the plaintiff's railroad can haul or can ever hope to haul, is logs in car load lots from points on the railroad into the town of Batesville, because the land on which this timber is situated is low and wet and, as shown by the facts in evidence on the trial of this cause, will never be cultivated and after the timber is cut off and taken to other places and made into lumber, the entire investment of the plaintiff and of the Illinois Central Railroad Company as well, will be practically worthless. If the Court will, however, make a comparison of the rates as established by the

Railroad Commission of Mississippi for this road with the rates on other railroads within the State of Mississippi—as shown by the testimony of the witness, Moore, (Record, pages 108, 109, 110 and 111) the Court can readily see that the rates which have been established by the Railroad Commission of Mississippi for the railroad being operated by the plaintiff as lessee, are very much lower than a large majority of the roads mentioned by the witness.

We contend that the facts of this case, as shown by the record of the evidence taken on the trial; and as construed in the light of the decisions of this Court on the question as to whether the rates which have been established by the Commissions of the various States for the various railroads are confiscatory or not under the 14th Amendment to the Constitution of the United States, show conclusively that if the plaintiff should put into effect on his line of railroad the rates which were established by the Railroad Commission of Mississippi, that it would amount to the taking of his property for the use of the public without due compensation and we contend, therefore, that the permanent injunction against the enforcement of the order of the Railroad Commission of Mississippi of July 23rd, 1913, should have been granted.

AN ACTUAL EXPERIMENT WITH THE RATES ESTABLISHED BY THE MISSISSIPPI RAILROAD COMMISSION IN EFFECT ON INTRASTATE SHIPMENTS OVER THE BATESVILLE SOUTHWESTERN RAILROAD SHOW THAT THOSE RATES WERE CONFISCATORY.

The defendants, in the pleadings, contend that the rate which had been established by the plaintiff and put into effect on the railroad operated by him as lessee, was so high that the shippers of logs in car load lots could not afford to make shipments of logs over the railroad; and that if the rate which was established by the Railroad Commission of Mississippi was put into effect on the railroad by the lessee, that the increase in business would be so great that the plaintiff would really earn more with those rates in effect than with the rates which he had voluntarily established and put into effect.

The Court, on the application for a temporary injunction, with the proof that was before the Court at that time, approved this contention of the defendants and held that it would at least be better not to interfere with the rates which had been established by the Railroad Commission of Mississippi, until the final hearing, as that would afford a period for experiment as to the power of the lessee to develop new business in volume sufficient to make the Commission rates remunerative.

(Record, Page 76 and 77.)

This opinion and the decree rendered in accordance with the same, was rendered by the Court on the 10th day of November, 1913, and it was stated in the opinion of the Court that the proof showed at that time that the lessee would earn only a return of about 2½% on his investment if the rates which were established by the Railroad Commission of Mississippi had been in effect prior to the rendition of that decree and that that was not a sufficient amount to be earned by the plaintiff and he was entitled to a larger per cent. of earnings on his investment.

Prior to the rendition of this decree and opinion of the Court, the plaintiff on September 10th, 1913, put into effect on all intrastate shipments of logs in car load lots over the Batesville Southwestern Railroad, the rates which had been established by the Mississippi Railroad Commission. These rates were made to apply on all shipments made wholly within the State of Mississippi.

The testimony shows that these rates were in force and effect from the last mentioned date to March 31st, 1914, or nine months, and that for that nine months, the road did not earn anything, but the operating expenses of the road exceeded the income by the sum of $495.85.

(Record, Page 83.)

The proof further shows that there was no increase in business for that nine months over and above any time prior to the date on which the rates were put into effect. This proof stands uncontradicted by any testimony in the record on behalf of the defendants.

This Court, in the case of NORTHERN PACIFIC RY. CO. VS. THE STATE OF NORTH DAKOTA, decided on March 8th, 1915, and reported in 236 U. S., Page 420, 59th Law Ed., 735, in deciding whether a rate which had been established by the Laws of North Dakota fixing a maximum intra-state rate for the transportation of coal in car load lots, was confiscatory as to the railroad mentioned in that suit where there had been a period of experiment, and where the experiment showed that the railroad could not earn, under the rates which had been established by the Laws of North Dakota, a reasonable return upon the amount invested, and where the proof showed that the actual operating expenses had exceeded the road's income on that particular commodity was, say, as follows:

"The state insists that the enactment of the statute may be justified as a 'declaration of public policy.' In substance, the argument is that the rate was imposed to aid in the development of a local industry and thus to confer a benefit

upon the people of the state. The importance to the community of its deposits of lignite coal, the infancy of the industry, and the advantages to be gained by increasing the consumption of this coal and making the community less dependent upon fuel supplies imported into the state, are emphasized. But, while local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the state may compel the carrier to maintain a rate upon a particular commodity that is less than reasonable, or—as might equally well be asserted—to carry gratuitously, in order to build up a local enterprise. That would be to go outside the carrier's undertaking, and outside the field of reasonable supervision of the conduct of its business, and would be equivalent to an appropriation of the property to public uses upon terms to which the carrier had in no way agreed. It does not aid the argument to urge that the state may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant, they may be reduced. Certainly it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action.

"We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable.

"The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges, and it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit upon every sort of business. There are many factors to be considered—differences in the articles transported, the care required, the risk assumed, the value of the service—and it is obviously important that there should be reasonable adjustments and classifications. Nor is its authority hampered by the necessity of establishing such minute distinctions that the effective exercise of the rate-making power becomes impossible. It is not bound to prescribe separate rates for every individual service performed, but it may group services by fixing rates for classes of traffic. As repeatedly observed, we do not sit as a revisory board to substitute our judgment for that of the legislature, or its administrative agent, as to matters within its province. San Diego Land & Town Co. vs. Jasper, 189 U. S., 439; Louisville & Nashville R. R. Co. vs. Garrett, 231 U. S., 298, 313. The Court, therefore, is not called upon to concern itself with mere details of a schedule, or to review a particular tariff or schedule which yields substantial compensation for the services it embraces, when the profitableness of the intrastate business as a whole is not involved."

The Court says further, in conclusion, in the same case:

"To repeat and conclude: It is presumed—but the presumption is a rebuttable one—that the rates which the state fixes for intra-state traffic are reasonable and just. When the question is as to the profitableness of the intra-state business as a whole under a general scheme of rates, the carrier must satisfactorily prove the fair value of the property employed in its intra-state business and show that it has been denied a fair return upon that value. With respect to particular rates, it is recognized that there is a wide field of legislative discretion, permitting variety and classification, and hence the mere details of what appears to be a reasonable scheme of rates, or a tariff or schedule affording substantial compensation, are not subject to judicial review. But this legislative power cannot be regarded as being without limit. The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic to which the rate applies, it must be concluded that the state has exceeded its authority."

To the same effect as the decision in this case cited, is the decision of this Court in the case of NORFOLK

& WESTERN R. R. CO VS. W. S. CONNELLY, ATTORNEY GENERAL OF THE STATE OF WEST VIRGINIA ET AL., decided on the same day and reported in the 236 U. S., Page 605, 59th Law Ed. 745.

In both of the cases cited, there had been a period of time in which the rates which had been established by the States had been tried by the Railroad Company and the proof showed that after that trial, the earnings of the road did not equal the amount which had been expended by the railroads in operating expenses for transporting that particular commodity on which the rate had been fixed.

The case at bar, the rates complained of are on one particular commodity, to-wit: logs in car load lots. That commodity is practically the only commodity which moves over the railroad and the entire operating expenses of the railroad is expended for the purpose of transporting that particular commodity; and in the case at bar, it is shown that after an experiment of nine months with the rates which were established by the Railroad Commission of Mississippi, and which are complained of as being confiscatory, that there was a loss to the plaintiff and lessee of the railroad in something over $480.00.

The defendants contended in the pleadings and on the trial of this cause that there was a great body of virgin timber along the line of railroad, and that it

was to the interest of the public that a rate be established which was low enough to justify the owners of that timber shipping the same to a market; the nearest market for the timber which was grown on the land being in Memphis, Tennessee. This contention of the defendants was upheld to some extent in the opinion of the Court on the application for a temporary injunction, but the evidence in the case showed that if the rate which had been established by the Mississippi Railroad Commission were put into effect by the plaintiff, as it was done for a period of nine months, that the plaintiff could not earn under that rate a sufficient amount to pay the cost of operation expended by him in hauling the timber.

We think that the opinion of this Court in the case of NORTHERN PACIFIC RAILROAD COMPANY ET AL. VS. NORTH DAKOTA, supra, absolutely settles the contention that was made by the defendants, in view of the facts in this case.

We think that the two cases cited are directly in point with the case at bar, and that in view of the decision of this Court in those two cases, the decree of the Court holding that the permanent injunction against the enforcement of the rates which had been established by the Mississippi Railroad Commission on logs in car load lots, over the Batesville Southwestern Railroad, is clearly error, and that the permanent injunction should have been granted.

Conceding for the sake of argument (but we do not in fact concede that) that the rates which were established voluntarily by the plaintiff on April 12th, 1912, and put into effect on the Batesville Southwestern Railroad are too high, yet, the only matter which is before the Court in this cause is not whether those rates were too high, but whether the rates which were established by the Missisippi Railroad Commission were too low and whether the enforcement of those rates established by that Commission would result in the taking of the property of the complainant for public use without just compensation, because it is held in the two cases last cited, and in all other cases on this subject, this Court does not sit as a revising board, but this Court has jurisdiction to decide whether a particular rate yields substantial compensation for the services it embraces.

CONCLUSION.

We submit that the decree of the Court complained of in the Bill of Exceptions in this cause is error and that this cause should be reversed.

FIRST. Because of the decision of the Court on the application for a temporary injunction, which was ratified in the decision on the trial for a permanent injunction, that the interest of the plaintiff in the railroad was a matter which could not be considered in determining whether the rates which were established by the Mississippi Railroad Commission were confiscatory or not.

SECOND. Because the proof, as it appears in this record, shows that the railroad which was operated by the plaintiff would be operated by him without substantial compensation if the rates which had been established by the Mississippi Railroad Commission on logs in car load lots had been in effect from April 12th, 1912, to September 10th, 1913.

THIRD. Because the uncontradicted proof shows that the rates which had been established by the Railroad Commission of Mississippi had been put into force and effect over the line of railroad operated by the plaintiff for a period of nine months, and for that nine months the operating expenses of the railroad, in transporting that particular commodity, ex-

ceeded the income derived by the lessee by something over $480.00.

Respectfully submitted,

WILLIAM P. METCALF,
Solicitor for R. J. Darnell.

United States of America,
State of Tennessee,
Shelby County.

I, the undersigned, solicitor for R. J. Darnell, Appellant in the foregoing case of R. J. Darnell vs. George R. Edwards et al., Appellees, No. 595, hereby certify that I have this day mailed to Jas. Stone & Son, Oxford, Mississippi; George H. Ethridge, Assistant Attorney General, Jackson, Mississippi; Woods & Kuykendall, Charleston, Mississippi; postage prepaid, a true copy of the foregoing brief. The above mentioned parties being the attorneys of record for the said defendants.

Witness my signature, this the 16th day of March, 1916.

William P. Metcalf
Solicitor for Appellant.

No 216
~~No. 595~~

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

J. R. DARNELL, Appellant,

versus

GEORGE R. EDWARDS, ET AL., Appellees.

Appealed from the District Court of the United States
For the Southern District of Mississippi,
Jackson Division.

BRIEF FOR APPELLEES.

GEO. H. ETHRIDGE,
Asst. Attorney General of Mississippi
For The Appellee.

Mr. James Stone,
Messrs. Woods & Kuykendall,
And
Mr. J. B. Harris,
Of Counsel.

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No. 595

OCTOBER TERM, 1916.

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vs.

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Appealed from the District Court of the United States For the Southern District of Mississippi, Jackson Division.

BRIEF FOR APPELLEES.

We desire to say at the outset, that there can be no difference of view as to the law governing this case. There is no contention on the part of the appellees that a state, through its legislature, or any tribunal created by it, can deprive a citizen of property without due process of law, or enforce any schedule of rates or tariffs for a railroad company or other corporation which is confiscatory. The question here is purely one of fact, that is: Are the rates and tariffs, established by the Mississippi Railroad Commission and attacked by the complainant, shown by the evidence to be confiscatory, as claimed?

The opinion of this Court in the recent case of *Simpson vs. Shepherd*, 238 U. S. 350, 57 Law Ed., 1511, is such a complete and exhaustive review of the whole subject of the powers of Congress and of the states in reference to rate making, that it will hardly be nec-

essary to cite any other authority. The principles governing this case are practically all stetled by that case; but, we will state here certain principles of law with special application to the case which are fundamental and well settled by numerous decisions of this Court, and to which we think it advisable to call the Court's special attention.

First. That the burden of proof is on the complainant to show *clearly*, that he is entitled to the relief sought. If the case should be treated as an ordinary proceeding for an injunction, the complainant has not made out his case.

> "An injunction is a transcendant or extraordinary power, to be used sparingly and only in a clear and plain case."
>
> *Irwin vs. Dixion*, 9 How. 10, 13, Law. Ed., 25.
>
> "To obtain an injunction, the right must be clear, the injury impending and threatened, so as to be averted only by the protecting preventive process of injunction."
>
> *Truly vs. Wanzer*, 5 How. 141, 12 Law Ed., 88.

These rules apply with special force to a case on final hearing on an application for a perpetual injunction, as in the case at bar.

Second. This rule applies with additional, and peculiar force in cases where an attack is made, as in the case at bar, upon the findings of a state tribunal having jurisdiction of the subject, fixing the rates and tariffs of railroad companies and other public service corporations.

In the case of *San Diego Land & Town Company vs. National City*, 174 U. S. 737-750, 43 Law Ed., at page 1160, this Court said:

> "But it should also be remembered that the judiciary ought not to interfere with the collections of rates established under legislative sanction unless

they are so *plainly* and *palpably* unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless the case presents, *clearly and beyond all doubt*, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for public use." (Italics are ours).

In the case of *Chicago, M. & St. P. R. R. Co. vs. Tompkins*, 176 U. S., page 172, 44 Law Ed., page 420, the Court said:

"In approaching the consideration of a case of this kind (rate making), we start with the presumption that the act of the legislature is *valid*, and upon any company seeking to challenge its validity rests the burden of *proving* that it infringes the constitutional guaranty of protection to property. The case must be a *clear* one in behalf of the railroad company or the legislation of the state must be upheld."

In the case of *San Diego Land & Town Company vs. Jasper*, 189 U. S., 439, 441, 442, 47 Law Ed., 892, 894, 895, the Court said (approving the case of *San Diego Land & Town Company vs. National City, supra*):

"The limited effect of the ordinance must be taken into account when we are called upon to declare it such a *flagrant* attack upon the rights of property under the guise of regulations as to *compel* the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for public use."

In the case of the *Illinois Central R. R. Co. vs. the Interstate Commerce Commission*, 206 U. S., page 442, 51 Law Ed., at page 1133, the Court said:

"The findings of the Commission are made by law *prima facie* true. This court has ascribed to them the strength due to the *judgments* of a tribunal appointed by law and informed by experience. *Louisville & N. R. R. Co. vs. Behlmer*, 175 U. S. 648, 44 Law Ed., 309; *East Tennessee, V. & G. R. R. Co. vs. Interstate Commerce Commission*, 181 U. S. 1, 45 Law Ed. 719-729. And, in any special case of conflicting evidence, a probative force must be attributed to the findings of the Commission, which, in addition to knowledge of conditions, of environment, and of transportation relations, has had the witnesses before it and has been able to judge of them and their manner of testifying. In the case at bar these considerations are reinforced by a concurrent judgment of the circuit court."

In the case of the *Cincinnati, H. & D. R. R. Co. vs. Interstate Commerce Commission*, 206 U. S. 142, 51 Law Ed., 995, the Court said:

"The statute gives *prima facie* effect to the findings of the Commission, and, when those findings are concurred in by the circuit court, we think they should not be interfered with unless the record establishes that *clear* and *unmistakable* error has been committed."

See, *Cincinnati, N. O. & T. P. R. R. Co. vs. Interstate Commerce Commission*, 162 U. S. 184, 40 Law Ed., 935; *Louisville & Nashville R. R. Co. vs. Behlmer*, 175 U. S. 648, 44 Law Ed. 309.

It is true in the last two cases cited, this Court was dealing with the findings of the Interstate Commerce Commission, but the Mississippi statute makes the findings of the Mississippi Railroad Commission *prima facie* reasonable (Mississippi Code, 1906, Section 4836), and, in addition to this, the District Court of the United States has passed upon and sustained the findings of the Commission.

In the case of *Wilcox vs. Consolidated Gas Co.*, 112 U. S. 20, 53 Law Ed. 383, the Court said:

"The rule by which to determine the question is pretty well established in this Court. The rates must be *plainly unreasonable* to the extent that their enforcement would be equivalent to the taking of property for public use without such compensation as, under the circumstances, is just both as to the owner and the public. There must be a fair return upon the reasonable value of the property at the time it is being used for the public. *San Diego Land & Town Co. vs. National City*, 174 U. S. 739, 43 Law Ed., 1154, 1161; *San Diego Land & Town Co. vs. Jasper*, 189 U. S. 439-442, 47 Law Ed., 892, 894."

"Many of the cases are cited in *Knoxville vs. Knoxville Water Co.*, just decided, 212 U. S. 1. The case must be a clear one before the courts ought to be asked to interfere with state legislation upon the subject of rates."

Where the evidence leaves the matter in doubt, the rates will be sustained.

Northern Pacific Railroad Co. vs. North Dakota, 216 U. S. 580, 54 Law Ed., 624.

In the case of *Simpson vs. Shepard*, 230 U. S. 350, 57 Law Ed. 1511, at page 1562, the Court said:

"It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases. The constitutional invalidity must be manifest, and if it rests upon disputed questions of fact, the invalidating facts must be proved. And this is true of asserted value as of other facts."

It is presumed that the Commission acted with full knowledge of the situation.

Seaboard Air Line vs. Fla., 203 U. S. 261, 51, Law Ed., 75;

Atlantic Coast Line R. R. Co. vs. Fla., 203 U. S., 256, 51 Law. Ed., 174;

Minneapolis R. R. Co. vs. Minn., 186 U. S., 257; 46 Law Ed., 1151;

Chicago etc., R. R. Co. vs. Tomkins, 176 U. S. 167, 44 Law Ed., 417;
Riggan vs. Farmers Loan & Trust Co., 154 U. S.;
Railroad Commission vs. Cumberland Tel. Co., 212 U. S. 414, 53 Law Ed., 557;
Dow vs. Bievelman, 125 U. S. 680, 31 Law Ed., 841.

Third. One important element in determining the reasonable rates is to determine the present value of the property devoted to the public use, and this value must not be left to conjecture, but must be made clear, and this Court has said in the case of *Simpson vs. Shepard, supra*, that this value must not depend upon mere conjecture, and that it is clear in ascertaining the present value the Court is not limited to a consideration of the amount of the actual investment, as in the question of rates, the burden is upon the complainant to show clearly the present value.

See, also, *San Diego Land & Town Co. vs. Jasper, supra.*

We have, at the risk of tediousness, set out the extracts from the many opinions of this Court in full for the purpose of showing how firmly this Court has settled the rule as to the character of evidence which the complainant party must adduce in a case of this character. It must be more than enough to raise a mere doubt; it must be more than enough to raise a conflict; it must be of such a character as to amount to *proof* that the rates fixed by the State Commission are unreasonable and confiscatory, and we insist that no such proof has been made in this case, and we will now turn to a consideration of the facts as were shown by the record before the Court.

THE FACTS.

We rely upon the following points, among others:

I.

The so-called test or experiment as to the effect of the Commission's rates, was, in fact, no test, because made under radically abnormal conditions, and for too short a period of time.

II.

No showing whatever is made as to the basis for the rates adopted by the complainant further than some other railroads had similar rates.

III.

No showing whatever was made as to the character of the roads which had rates claimed to have been as high as those adopted by the complainant.

IV.

No showing whatever is made as to why the local rates fixed by the complainant should be higher than the rates for the same distances on the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad and of other roads shown to be of the same character and standard as the Batesville & Southwestern Railroad.

V.

No satisfactory showing was made as to the present value of the property of the complainant devoted to the public use.

VI.

No proper showing was made as to the operating expenses.

VII.

The evidence shows that the rates fixed by the Mississippi Railroad Commission are reasonable.

VIII.

Three tribunals, after full investigation, held the rates fixed by the Mississippi Railroad Commission to be reasonable rates, or that the rates fixed by it were not confiscatory rates.

In order that the Court may get the proper setting of the case, it is important that the relation which the complainant sustained to the whole situation should be gotten clearly before the Court. He was the owner of the land from which the principal part

of the timber, practically all of it, was to be shipped. See the Bill of Complaint, paragraphs 1 to 4. Testimony of Lang, p. 87. He was the owner of practically all of the stock in the corporation designated as J. R. Darnell, Incorporated, which corporation owned the mill to which the timber taken from complainant's land was to be shipped and manufactured into lumber. See Conway's testimony, page 91. He was the President of this corporation. It is true he claims that he had from time to time put practically all of the stock in the name of his sons, but the fact remains that he and his sons owned all but 2 per cent of the stock, *He was also lessee of the railroad.* In other words, the complainant dominated the situation, and the fact that he did so dominate it was referred to in the opinion rendered by the three judges who heard the application for an injunction *pendente lite.* (Page 76, Record.) The Court said:

> "The interest of the plaintiff is both the logging business and the railroad also impairs the value of the usual inference that the operator of the railroad would so operate it as to develop all the business that could be developed and would make the greatest possible profit. It is clear that the interest of the plaintiff in the railroad may be counterbalanced by his interest in the timber that he already owned, and that he may yet desire to acquire at lower figure obtainable because of its inaccessibility to proper railroad facilities and rates. So, it is true that the amount actually expended by the plaintiff to build the railroad in this instance may be no true index to its fair value, since his timber interests may have induced him to build a railroad that could not be expected to be operated profitably as a purely transportation proposition."

In other words, it was manifestly in the mind of the Court, under the peculiar situation shown to exist in this case, it was immaterial to the complainant what the rates were as what he would lose on the railroad proposition he would recoup on the timber. It was

his timber, his railroad, and his mill to which it was being shipped. The Court certainly puts its finger on the quick of the case in considering this phase of the situation. The complainant stood to win in any event. It was immaterial to him what the rates were, how high or how low. He could have made the rates double the amount at which he did place them, and this would have put into his pocket as a railroad owner what might have appeared as a loss on the timber. As a matter of fact, it is shown by the testimony in the case that the rates fixed by the complainant were prohibitory as to all timber owners except himself.

It is shown by the uncontradicted testimony of Vance (page 103 of the Record), a large owner of timber land touched by the railroad, that he could not dispose of this land or the timber thereon on account of the excessive rates fixed by the complainant.

Elliott Lang, the Auditor and Traffic Manager for the complainant, testified (page 88 of the Record) that there were logs lying along the railroad for a considerable time, because the owners of the logs were unwilling to pay the rates demanded by the complainant (page 87 of the Record).

On page 88 of the Record, the same witness testifies that he *did know* that the owners of land other than the complainant would ship logs provided that they could get a rate they wanted, but otherwise not. In other words, the inference drawn by the Court sitting on the hearing of the application for the preliminary injunction, that the complainant, being interested in and controlling both ends of the situation, that is to say, the timber and the railroad, the main purpose actuating him in having the railroad constructed being to market the timber on his land as a private enterprise, he not being interested in the railroad as a transportation proposition, was in a situation to be indifferent as to rates and to place him in such a dominating situation that he could by fixing exorbitant rates force other timber owners to sell to him. The Record shows clearly an attempt on the part of the

complainant to establish an artificial arrangement by which it would be made to appear that he was not, in fact, the master of the situation.

After a complaint had been made to the Mississippi Railroad Commission and a request for a reduction of the complainant's rates, which complaint was filed with the Mississippi Railroad Commission on July 23rd, 1913 (page 55 of the Record), R. J. Darnell Incorporated, which was a party to the contracts made with the Illinois Central Railroad Company for the construction of the road, went through a form of transferring to R. J. Darnell individually, the complainant, of all its interest of whatever kind in the railroad and its equipment. (See pages 27, 29, 31, 34, 35, 42, of the transcript).

It is shown indisputably by the bill of complaint (Tr., page 4), by Elliott Lang (page 81), and by the complainant himself (page 98 of the transcript), that at the time the contracts with the railroad were made and the arrangement entered into, the complainant was the owner of the land and the timber. The complainant, however, claimed that he had sold the timber on the land to R. J. Darnell Incorporated (Page 97 of the transcript.). He does not give the date of this sale, nor was he able to state the terms upon which the sale was made, except that R. J. Darnell Incorporated was to pay "so much per stump," but was unable to state how much. (See page 97 of the transcript.)

The conclusion is inescapable that these transfers were made in fact as a matter of form, and that as a matter of substance the interest of R. J. Darnell in the situation was, in fact, if possible, the effect of the real situation showing R. J. Darnell to be, in fact, the owner and controller of the land, the mill and the railroad. We feel safe in asserting that all of these transactions took place after the complaint was made to the Mississippi Railroad Commission.

We think it important to get this setting of the case clearly in the mind of the Court, and we, therefore, call attention pointedly to these facts.

We will now consider the facts in the order set forth in the foregoing part of the brief.

1. The so-called test or experiment as to the effect of the Commission's rates was, in fact, no test, because made under radically abnormal conditions.

The owners of the timber land, other than the complainant, whose lands were contiguous to or accessible to the railroad, finding the rates fixed by the complainant so high as to be prohibitory applied to the Mississippi Railroad Commission for a reduction of the rate. (See page 46 of the Transcript.) The Commission cited the complainant, and the matter was fully investigated by the Commission, and on the 9th day of July, 1915, made an order disallowing the complainant's rates and fixed the rates which are here complained of. (See pages 47 and 48 of the Transcript.)

On September 19th, 1913, the complainant filed the bill in this cause, asking for an injunction *pendente lite* to be heard at Birmingham, Alabama, before himself, and David B. Shelby, Judge of the Circuit Court of Appeals, and W. I. Grubb, District Judge. Affidavits were filed and the cause came on for hearing on the application for an injunction *pendente lite*, and the injunction was denied, the Court holding that no sufficient showing had been made to justify it in declaring the rates prescribed by the Mississippi Railroad Commission were confiscatory, or at least it would not interfere with the Commission's rates "until the final hearing, as this would afford a period for experiment as to their power to develop new business in volume sufficient to make the Railroad Commission's rates remunerative." (See page 77 of the Transcript.) This order was made on November 10th, 1913. (See page 78 of the Transcript.

The case came on for final hearing on November 7th, 1914, on bill, answer, exhibits and proof. Much testimony was taken.

It was shown by Elliott Lang, a witness for the complainant, that the rates fixed by the Mississippi Railroad Commission were not put into effect until September 10th, 1913, some two months after the order was made, and although the cause did not come on for hearing until the November term, 1914, the period of experimentation extended *only for six months*; that is to say, from September 10th, 1913, until March 31st, 1914. We call the Court's particular attention to the period of experiment testified to. It is shown by the testimony of Lang, that the road was in the course of construction during all that period, in fact until the middle of June, 1914. (See transcript, page 81), and that regular trains had not been run on the road until some time in April, 1914. (See page 81 of the Transcript.) It was further shown by Lang that practically all of the business of the road was hauling logs from the land of complainant for shipment to the mill operated by R. J. Darnell Incorporated, at Memphis. (See page 87 of the Transcript.) The mill operated by R. J. Darnell Incorporated at Memphis was burned on June 15th, 1913. (See testimony of Lang, page 86 of the Transcript.) After the burning of the Memphis mill, R. J. Darnell Incorporated, constructed a mill at Batesville, Mississippi, which mill was placed in operation on March 17th, 1914. (Page 87 of the Transcript.) During the period from June, 1913, to March, 1914, while the mill was not in operation logs from the complainant's land were not shipped over the railroad except such logs as were on hand when the mill at Memphis was burned, about one million feet. (Page 87 of the Transcript.)

On page 84 of the Record, this witness states, that there "was quite a heavy movement shown in the report made by the Railroad Company, ending September 30th, 1913, and then the movement fell off to *nothing*, and picked up again in March, 1914." In other words, it is shown by this testimony, that for the period testified to as the period of experimentation; that is to say, from September 1913, to March 1914, the business

of the railroad had fallen off to nothing. We called attention above to the fact that the Railroad Commission's rates were not pretended to be put into effect until September 1913, and the period of experimentation testified to ended in March, 1914. We do not undertake to say why the complainant established this period testified to as the period of experimentation. Certainly, it is not intended to be inferred from this showing that the falling off of the traffic to *nothing* was the result of putting in the lower rates fixed by the Mississippi Railroad Commission. If that is intended to be the effect of this testimony, then it is the only case on record, we venture the assertion, in which the effect of reducing a rate was to stop all traffic. But, the Railroad Commission's rates had nothing to do with this abnormal traffic condition. It arose from the fact that practically all the business done by the railroad under its highest rates was the shipment of logs from the land of R. J. Darnell to the mill in Memphis, and when that mill was burned the traffic ceased, and ceased for the reason, as testified to by Lang and as shown by the Record, that the rates fixed by the complainant were so high that only the complainant could afford to ship logs over the road. He, though, could, because he dominated the situation, owning the logs, owning the railroad, and owning the mill.

The witness Lang testifies on page 87 of the Record, that there were a lot of logs lying on the right of way for a considerable time which were not shipped because the railroad demanded the interstate rate. He further testifies on page 88, of the Transcript, that the Railroad Company refused to receive any logs for other parties than Darnell at the Railroad Commission's rates which were to be shipped to Batesville, and there re-billed, unless the party would pay the rates established by the complainant. On the same page the witness states, that he did know that logs would be shipped if the owners could get the rates they wanted, otherwise they would not. In other words, that the logs would be shipped if the owners could get the Railroad Commission's rates

to Batesville, otherwise they would not be established.

We wish to call the Court's attention to this further condition. The rates demanded by the complainant are set forth on page 10 of the Transcript, and are as follows:

10 miles and under.....$2.80 per thousand feet.
15 miles and over 10 miles.... 3.35 per thousand feet.
20 miles and over 15 miles.... 3.90 per thousand feet.

This applied to any kind of logs.

It is shown that there is no joint rate with the Illinois Central Railroad, of which the Batesville & Southwestern Railroad, the complainant's road, was in fact a branch with connections at Batesville. It is shown that the rate on logs from Batesville to Memphis, a distance of 61 miles (page 99 of the Transcript), was 4½c per cwt. In other words, $4.50 per thousand. Under the arrangement which had been put into effect by the complainant all shippers of logs over the Batesville & Southwestern road were compelled to pay two local rates; that is to say, the local rate into Batesville plus the local rate on the Illinois Central Railroad from Batesville to Memphis. A simple sum in addition will show how onerous these combined rates were on all shippers except the complainant. For instance: from the station Acee, which is 7 3-10 miles from Batesville (see page 115 of the Record) the rate to Memphis would be $4.50 plus $2.80, in other words, $7.30. From stations fifteen miles, it would be $4.50 plus $3.35, or $7.85; and from Crowder, Mississippi, which is the southern terminus of the road, 15 7-10 miles from Batesville, the rate would be $4.50 plus $3.90; in other words, $8.40 per thousand. The complainant was the only timber owner who found it possible to do business under these rates. He assumed, as is shown by the testimony of Lang above set forth, to determine for himself the character of the shipment, and while he was issuing no contracts either oral or written for through shipment, had no joint rates, merely these local rates into Batesville.

In addition to all this, it was shown that the period selected for experiment covered the winter months, when the logging business would certainly be from natural causes at its lowest ebb, it having been shown that the railroad ran half of its length through low lands, and that these low lands are subject to overflow for about eight or ten miles through which the railroad runs, and that the track is overflowed after heavy rains for a considerable period of time, and that during the period of experiment the track had been washed away three or four times (See pages 97 and 98 of the record, testimony of Darnell); it being also shown that the railroad was not completed during this period but in course of construction; and, further (page 89 of the record), that only part of the train crew was necessary, the traffic being so light, and only one through train a day run.

We respectfully submit that under the conditions shown no test was made. Of course, when the Court referred to an experiment it meant an experiment *made under normal conditions* and not to an experiment made under conditions shown here which rendered it impossible to make anything like a fair test. Under normal conditions, the business of the complainant alone would have greatly swelled the volume of traffic and the revenues of the road. He was the principal shipper, the principal land owner. He practically monopolozed the business, and that being taken out it is not at all remarkable that the business should have shown a loss during the period instead of a profit. Manifestly, the result could not be attributed to the rates put in by the Mississippi Railroad Commission. As we have shown, however, the complainant selected as a period of experiment the very period and under the conditions existing the result would show a large falling off of traffic from causes not dependent upon or attributable to the rates put in by the Mississippi Railroad Commission. Even under normal conditions the period was too short.

In the case of *Norfolk & Western Railroad Co. vs. Connely*, 236 U. S., 605, 59 Law Ed. page 744, the periok of experiment was two years.

In the case of *Northern Pacific Railroad Co. vs. North Dakota*, 236 U. S. pages 585, 590, 59 Law Ed. 755, the period of experiment was over one year.

In the case of *Simpson vs. Shephard*, 230 U. S.; 57 Law Ed. page 1511, the period of experiment was one year.

We submit that on this point alone the Court would be justified in rejecting absolutely the testimony as to the experiment and affirming the case on this ground.

In the cases above cited, the Court will see that the Court held that this experiment must show with clearness that the rates attacked were confiscatory.

In the case of *N. P. Ry. Co. vs. Note of N. Dakota Ex. Rel.* 216 U. S. 580, 54 Law Ed. page 462, the Court holds that where the evidence leaves the matter in doubt the rates will be sustained. In the case at bar, the evidence leaves the matter more in doubt. There was in fact no test at all.

We have shown by the authorities cited in the first part of this brief, that the rule is that mere conjecture and speculations will not be indulged in in cases of this character. The burden of proof is on the complainant to show with clearness beyond any reasonable doubt that the rates attacked are confiscatory, otherwise the rates will be sustained.

II. No showing whatever is made as to the basis for the rates adopted by the complainant further than some other railroads had similar rates.

III. No showing whatever was made as to the character of the roads which had rates claimed to have been as high as those adopted by the complainant.

V. No satisfactory showing was made as to the present value of the property of the complainant devoted to the public use.

We will consider the second, third and fifth points together. It is insisted in the brief of counsel for the appellant that the question before the Court is not the reasonableness of the rates attempted to be established by the complainant, but whether the rates fixed by the Mississippi Railroad Commission were confiscatory. To a certain extent this statement is true, but the complainant is undertaking to defend his rates. He is insisting that they are proper rates, and he should sustain them, and we feel that it is germane to the issues that we should consider his rates. While it is true that the rates of other railroads operated under similar conditions upon like commodities is of evidential value though not conclusive in determining the question of the reasonableness of the rates. It is at the same time well settled that evidence that other railroads had similar rates is inadmissible unless it is shown that the conditions are similar.

See, Beale & Wyman Railroad Rate Regulations, par. 580.

We call the Court's attention also on this subject to the elaborate note to the case of the *Northern Pacific Railroad Co. vs. North Dakota*, in 39 Am. & Eng. Railway Cases, 1906 A at page 16.

See also note to the *Puget Sound Electric Ry. Co. vs. Railroad Commission*, Vol. 27 Am. & Eng. Ann. Cases, 1913 B. page 774.

The only showing made in the case at bar on these points is by the witness Elliott Lang, who testifies on page 85, that he had investigated the rates established by other railroads similar to this road, and, in effect, on roads in Mississippi. This is the extent of his testimony further than setting forth the rates charged by some other railroads.

It is shown in this case and not controverted in any way that the complainant's road was a standard guage road, built under the supervision and for the purpose of becoming a part of the Illinois Central Railroad System.

This was quoted with approval in *Smyth vs. Ames*, and the Court there added:

"It cannot, therefore, be admitted that a railroad corporation maintaining a highway under authority of the State may fix its rates with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates of transportation of persons or property on a railroad are exacted without reference *to the fair value of the property used for the public or the fair value of the services rendered*, but in order simply that the corporation may meet operating expenses, pay interest on its obligations, and declare a dividend to its stockholders."

The Court then goes on to say at page 733, after adverting to certain conditions which might exist rendering branch lines unprofitable:

"Would it be proper, in such cases, to hold that the road should have the right to charge for its intrastate traffic in that section tariff rates high enough to enable it to earn a certain, fixed percentage on its investment? Would not, in such a case, the rates have to be so high as to be *confiscatory of the property of the residents of that State*? (This is practically the result of the rates established by the complainant in the case at bar). Must the public guarantee the railroads a certain income on their investment, regardless of the condition of the country traversed, or whether bad judgment was exercised in the selection of the route? We do not think so. New lines or branches to increase the business of the main line, or the exercise of bad judgment in the building of a railroad, are matters to be considered in determining what rates would be fair and just to the corporation as well as the public. That the railroads are entitled to reasonable profits on their investments, and the public to reasonable rates, or, to express it differently, that the rights of the public and railroad companies are reciprocal, is the correct rule of law.

"In *Reagan vs. Farmer's Loan & Trust Co., supra,* Mr Justice Brewer, speaking for the Court, in the concluding part of the opinion said:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others. There may be circumstances which would justify such a tariff; there may have been extravagance and a needless expenditure of money; there may be waste in the management of the road; enormous salaries; unjust discrimination as between individual shippers, resulting in general loss. The construction may have been at a time when material and labor were at the highest price, so that the actual cost far exceeds the present value. The road may have been unwisely built, in localities where there is not sufficient business to sustain a road. Doubtless, too, there are many other matters affecting the rights of the community in which the road is built, as well as the rights of those who have built the road." 154 U. S. 412, 14 Sup. Ct. 1059, 38 Law Ed. 1014.

In *San Diego, etc. Co. vs. Jasper,* 189 U. S. 439, 446, 23 Sup. Ct. 571, 574, 47 Law. Ed. 892, it was held:

"If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the Constitution requires that, say, two-thirds of the contemplated number should pay a full return.' "

See also *Simpson vs. Shephard, supra,* at page 454, 455, 57 Law Ed. page 1564.

In the case of *Simpson vs. Shephard*, the Court uses this language:

> "It is clear in ascertaining the present value, we are not limited to a consideration of the amount of the actual investment; if that has been reckless, improvident, losses may be sustained which the community does not underwrite."

On page 79 of the transcript, in the testimony of Elliott Lang, is set forth what purports to be a statement as to the cost of construction, or at least the money claimed to have been paid by the complainant. This statement was evidently before the Court sitting on the hearing of the application for the preliminary injunction, and the insufficiency of it is adverted to by the Court in its opinion on page 74 of the transcript. This is but a general statement, and, as was said by the Court below, the correctness of the statement was denied in the sworn answer of the defendant. In the opinion the Court refers to the fact on page 74, that under the contract with the Illinois Central Railroad Company the plaintiff has been repaid the sum of $69,500.00 of the amount expended by it. On page 80 at the bottom of the account, the amount contributed by the Railroad Company is put at $39,584.00, a very wide discrepancy.

As we have said, there is nothing whatever in the record to show what is the value of the service rendered to the public. So, when we say, as we have said above, that there was no proper showing as to the basis for the rates adopted by the complainant, we think the transcript fully bears us out. Nothing is shown except an arbitrary adoption of rates of some other railroad which had similar rates to those charged by the complainant.

IV. No showing whatever was made as to why the local rates fixed by the complainant should be higher than the rates for the same distances on the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad, located in same territroy, and of

other roads not located in same territory, shown to be of the same character and standard as the Batesville & Southwestern Railroad.

The roads were of the same construction and of the same character and grade. The Batesville & Southwestern road was built uhder a charter gotten out by the Illinois Central Railroad Company; was built according to the Illinois Central Railroad Company's standard for the purpose of being operated in connection with it.

J. H. Hines testifies on page 101 of the record, that the road was a fine one.

J. G. Neudorfer testifies on page 102, that on on the railroad track there is scarcely no grade. It is comparatively straight for about fifteen miles.

T. F. Griffith testifies on page 106 of the transcript, that there were no grades or curves, and one of the finest road-beds he had ever seen.

H. M. Mims, on page 1107 of the transcript, that the road was of standard guage and the best in grade and best in construction.

None of the conditions of the other roads, the rates of which were adopted by Lang, are in evidence. The Court would require more than this general statement, and even if the roads were similar the arbitrary adoption of their rates would not establish the reasonableness of complainant's rates. He leaves out of view entirely the real basis, or the real test, which must be applied to determine the reasonableness of the rates. What these tests are are set forth in the case of *Simpson vs. Shephard, supra.* These tests are the present value of the property claimed to be devoted to the public use, and the value of the service to the public, and these facts must be shown with clearness, as was said in the case of *Simpson vs. Shephard, supra,* at page 405, 57 Law Ed. at page 1563:

"But it does not justify the acceptance of results which depend upon mere conjecture. It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be

exercised only in clear cases. The constitutional invalidity must be manifest, and if it rests upon disputed questions of fact, the invalidating facts must be proved. And this is true of asserted value of other facts."

In any condition there is absolutely no showing or attempted showing as to the value of the service rendered. The interests of the complainant are not the only thing to be looked at in this case. He seems to have proceeded entirely on the theory, that the determining question was as to whether he had made a profit, or whether he had adopted such rates as would show a profit?

In the Arkansas Railroad Rate Cases, 168 Fed. at page 732, the Court said:

"As to what constitutes a reasonable rate must depend upon the facts of each case, and cannot be determined without reference to the interests of the public. *Covington & Lexington Turnpike Co. vs. Sanford*, 164 U. S. 578, 41 Law. Ed. 560; *Smyth vs. Ames*, 169 U. S. 166, 42 Law Ed. 819; *Reagan vs. Farmers Loan & Trust Co., supra*; *San Diego Land Co. vs. National City*, 174 U. S. 739. 755, 43 Law Ed. 1154; *Chicago & Northwestern R. R. Co. vs. De* (C. C.) 35 Fed. 866, 878, 1. L. R. A. 744.

In *Covington, etc. Turnpike Co. vs. Sandford* the Court said:

'It cannot be said that a corporation is entitled or right, and without reference to the interests of the public, to realize a given per cent. upon its capital stock.''

M. C. Moore, a witness for the defendant, (page 107 of the transcript) was the rate expert for the Mississippi Railroad Commission and the Mississippi Department of Justice. He had had twenty years experience with rates. He has made investigation as to rates on logs on the different roads in the State of Mississippi, and he filed with his testimony the tariff

of several railroads, some of which were put on voluntarily and some by the Commission, all of which were practically in force at the time of the hearing of the cause.

The Illinois Central tariff, which appears on page 108, is as follows:

For 5 miles or less, 1¼cts. per 100 [illegible] ($1.25 per thousand);
For 10 miles and over 5, 1¼cts. per 100 lbs.
For 15 miles and over 10, 1¼ cts. per 100 lbs.
For 20 miles and over 15, 1½ cts. per 100 lbs.
For 25 miles and over 20, 1¾ cts. per 100 lbs.

The Yazoo & Mississippi Valley Railroad Company publish the same rates for the same distance. The New Orleans Great Northern Railroad publish a lower rate.

In fact, the witness files with his testimony the tariffs of fourteen roads, all of which except three are roads operating in Mississippi, and it will be found by comparison that the tariffs on logs on all of these roads in no instance exceeds the rates fixed by the Commission, but in most instances are less for the same distances. There is no attempt whatever to show that there is any difference whatever in conditions existing on the Illinois Central and the other roads which would justify a difference in rates on the complainant's road. The roads whose tariffs are set forth by Mr Moore are all standard roads, just as the complainant's road is, and certainly there should have been some showing as to why the complainant should be allowed to charge double the rates which the Illinois Central and other roads charge, or why there should be a different rate on his road. We insist that there is nothing whatever before the Court which would justify it in saying that the rates fixed by the Mississippi Railroad Commission were confiscatory rates.

We call the Court's attention to this view of the case. It is shown by the testimony, and admitted, that the railroad of which the complainant is the

lessee was built under a contract with the Illinois Central Railroad Company as a feeder to that road.

Mr. Parks, a witness for the complainant, (page 94 of the record), says: "I know the railroad was built in accordance with the contracts entered into and referred to. *All the incorporators of the Batesville-Southwestern Railroad were connected with the Illinois Central Railroad in some capacity.* * * * * * * * * * The Batesville & Southwestern Railroad was organized as a corporation for the purpose of satisfying the laws of Mississippi." "The reason that actuated the Illinois Central Railroad Company in making the contract was that it was shown that it was a business propostion for them to enter into the contract." (See also the testimony of Baldwin, page 95 of the record).

In other words, the Batesville & Southwestern Railroad leased and operated by the complainant, was built as a feeder and practically as a branch of the Illinois Central. It was built under its supervision, and is of the same standard as the main line of the Illinois Central Railroad, and under the contract will be taken over by the Illinois Central Railroad ultimately as part of its system. Now, suppose we were to substitute the Illinois Central Railroad for Darnell. Is there any reason shown by this record why this branch should charge a higher local rate than is charged by the Illinois Central Railroad main line on the like commodities for the like distances? Is there any reason shown by this record why this branch road should be allowed to charge twice as much as is charged on the Illinois Central Railroad and the Yazoo & Mississippi Railroad for the same distances and on like commodities? There can be no question whatever that this road is a feeder to the Illinois Central, and is practically now a branch of that road. Does the fact that this branch, in order to satisfy the laws of the State of Mississippi, was incorporated as a Mississippi road and leased to Darnell affect the question as to the reasonableness of the rates or afford any reason for putting on a different rate on the branch road than

the one which prevails on the Illinois Central Railroad main line? It must be assumed that the rates charged by the Illinois Central Railroad on its main line for the like distances and like commodities is a reasonable rate; that it is not a confiscatory rate. What reason is shown by the record for holding the rates fixed by the Mississippi Railroad Commission on the branch line, are unreasonable or confiscatory?

See Arkansas, Rate Case 168 Fed. 720.

VI. No proper showing was made as to the operating expenses. There is a statement in the record (page 12) purporting to show the operating expenses of the road for a period from July 1st, 1912, to June 30th, 1913. The Court below rejected this statement of the operating expenses, because it contained the item of $8,133.35 claimed as rental; that is to say, the item shown that the sum above mentioned was charged in operating expenses as one-twentieth of the amount claimed by the complainant to have been invested. On page 83 of the record, there is a general statement of the operating expenses for nine months ending March 31, 1914, and also of the earnings for that period. There is nothing whatever to show of what these operating expenses consisted. The road was at that time in course of construction, and while there is a general statement in the brief of counsel on page 53, that the operating expenses would increase, there is absolutely no showing in the transcript as to why they would increase, or what elements entered into the operating expenses as shown by the testimony of Lang, (page 84 of the transcript), and the whole statement must be rejected as highly misleading, because, as we have shown above, the conditions during the period covered by the nine months were radically abnormal, the road doing practically no business on account of the inability of the complainant to ship his logs owing to the burning of his mill as set forth.

VII. The evidence shows that the rates fixed by the Mississippi Railroad Commission are reasonable.

We take it that the Court will reject as being an insufficient showing, the statement as to the result of the operation of the road during the "nine months" (should be six months) testified to. In the first place, the Mississippi Railroad Commission had before it in fixing these rates the rates for the same commodities in force upon other railroads of like character in Mississippi, some of which were voluntarily put in by the railroads and others put in by the Commission. The defendant offered evidence as to the reasonableness of the rates.

J. H. Hines (page 101 of the record) testifies in detail as to the cost of operation of such a road as the complainant's and that the rates fixed by the Railroad Commission were reasonable. He states that he had experience in operating logging roads, and knew the expenses in operation and maintenance of them, and had operated himself logging roads, and was acquainted with the country traversed by the complainant's road.

J. G. Neudorfer (page 102) testified, that he had been engaged in the railroad business for about thirty years in the capacity of engineer, master mechanic and superintendent; that he was the superintendent of the Mississippi Division of the Illinois Central Railroad Company at the time the complainant's road was started. He gives in detail the expenses of operation and states that if the road had the volume of business which complainant testified it would have in normal times, the rates fixed by the Mississippi Railroad Commission would be remunerative rates.

M. C. Moore, the rate expert (page 107) testifies that these rates were reasonable, and gives his reasons for so stating by setting forth the tariffs of roads similar to the road in question of the same grade and standard. There is nothing whatever shown in the record, except that for a period, while conditions were chaotic and wholly abnormal, the road did not make a profit which in any way tends to impeach the reasonableness of the rates fixed by the Mississippi Railroad Commission. The fact that the rates fixed by the

complainant had been filed with the Interstate Commerce Commission is not evidence of the reasonableness of those rates or of the unreasonableness of the Mississippi Railroad Commission's rates.

In the case of *Simpson vs. Shephard, supra*, at page 417, the Court, in speaking to this point, says:

"But the State wide authority controls the carrier, and is not controlled by it, and the idea that the power of the State to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying interstate rates to places across the State border is foreign to our jurisdiction."

The Interstate Commerce Commission does not and cannot by the express provisions of the act deal with intrastate rates.

VII. Three tribunals, after full investigation, held the rates fixed by the Mississippi Railroad Commission to be reasonable rates, or that the rates fixed by it were not confiscatory rates.

1st. The Mississippi Railroad Commission, after full investigation of the Mississippi rates, and with full knowledge of all of the surroundings and with the witnesses before it, established the rates as reasonalbe.

2nd. The three judges, sitting on the hearing of the application for a preliminary injunction, held that there was no sufficient showing before it upon which they would be justified in declaring that the rates fixed by the Mississippi Railroad Commission were confiscatory.

3rd. The District Court sitting on final hearing held the rates to be reasonable.

In the case of the *Illinois Central Railroad Company vs. Interstate Commerce Commission*, 206 U. S. 42, 51 Law Ed. 1133, the Court said:

The findings of the Commission are made by law *prima facie* true. This Court has ascribed to them the strength due to the judgments of a tribunal

appointed by law and informed by experience. * * * And, in any special case of conflicting evidence, a probative force must be attributed to the findings of the Commission, which, in addition to knowledge of conditions, of environment, and of transportation relations, has had the witnesses before it and has been able to judge of them and their manner of testifying. In the case at bar these considerations are reinforced by a concurrent judgment of the Circuit Court."

See also *Cincinnati H. & D. R. Co. vs. I. C. Com.* 206 U. S. 142.

It is strenuously insisted by counsel for the complainant that the Court below erred in rejecting the item of one-twentieth of the amount claimed by complainant to have been invested in the enterprise, which item was charged in the estimate of operating expenses as rental. This item was properly rejected. Counsel clains that this should have been allowed, because at the end of twenty years under the contract the complainant's interest in the road ceases, and will be practically worthless. In other words, the claim is that the complainant has the right not only to earn a profit on the money claimed by him to have been invested in this enterprise, but to impose upon the public under the guise of operating expenses the burden of paying back to him the money which he has so invested. All that the complainant could claim under any authority is a fair return upon the money invested. It would be monstrous to say that the public should be taxed, in addition to this, with the cost of the actual investment. Complainant has embarked upon an enterprise looking to the marketing of timber growing on a very large tract of land owned by him. He purposes to make the public shoulder the entire burden. He was to take no risk. If he has made with the Illinois Central Railroad an injudicious contract, or if he has made an unwise investment, that is not a matter of public concern. He cannot, as stated by the

Court in the cases cited *supra* expect the public to underwrite his investment.

It is unnecessary we take it to argue this proposition further. It could not be justified from any point of view.

7. It is also claimed, and it seems with seriousness, by counsel for the appellant, that he had a right to fix his rates as he chose, freed from any control by the Mississippi Railroad Commission, because he was operating the road as an individual lessee and not as corporation. The complainant was operating as a common carrier, operating a railroad by virtue of the charter granted by the State of Mississippi making it a common carrier. He could not operate it in any other way. The Mississippi statute expressly gives the Mississippi Railroad Commission the right to fix the rates and tariffs of all railroads and other common carriers. (See Chapter 39, Mississippi Code, 1906, under the head of Supervision of Common Carriers). We think it entirely a waste of the time of the Court to undertake to answer this proposition.

In conclusion, we respectfully submit that the judgment of the Court below should be affirmed. The complainant has utterly failed to meet the burden imposed upon him by the law of making a clear proof, freed from any just or reasonble doubt that the rates fixed by the Mississippi Railroad Commission were confiscatory.

We submit that the conclusion is inescapable from the reading of this record that the complainant did not wish to develop traffic on this railroad, but as intimated by the Court below, in its opinion, he was not operating the railroad as a transportation proposition, but as a private enterprise for the purpose of developing his large tract of land and marketing the timber thereon. This being the overshadowing purpose, he not only did not endeavor to develop business but obstructed development in every possible way. He was dominating the entire situation and had,

as he thought, the other timber owners in the territory traversed by the road by the throat. He had put himself in a position where the question of rates did not affect him. He embarked upon the enterprise for the purpose of marketing the timber on his land out of which he purposed to make his profits, and the question of rates was as to him a matter wholly immaterial.

We respectfully submit that the judgment of the Court below should be affirmed.

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for the Appellee

James H. Flowers
For Appellee

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of Counsel.

DARNELL *v.* EDWARDS ET AL., CONSTITUTING THE MISSISSIPPI RAILROAD COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 216. Argued April 25, 1917.—Decided June 11, 1917.

In determining whether railroad rates fixed by a state authority are confiscatory because not yielding a proper return, the basis of calculation is the fair value of the property used in the service of the public.

Therefore, when a railroad which was originally constructed and owned by two is operated by one of them under an arrangement whereby his interest will end and become vested in the other at the expiration of a term of years, the original investment of the operating owner should not be charged in annual instalments against the annual operating revenue, in determining whether the rates fixed are remunerative.

There is a strong presumption in favor of rates fixed by an experienced administrative body after a full hearing.

Rates should not be held too low upon evidence that they proved un-

remunerative during a brief period, when conditions for traffic were abnormally poor and little effort was made to improve them.

In determining the adequacy of rates, the circumstance that the railroad has been unwisely built in an unfavorable locality, and the nature and value of the service actually rendered by it to the public, are matters to be considered.

Semble, that, in testing the validity of rates affecting a limited class of traffic in which the railroad is for the time engaged, an extra cost of construction, not justified by that traffic but incurred with a view to extending the road ultimately into more lucrative territory, should not be accounted as a part of the fair value by which the rates must be gauged.

In the absence of a fair test of rates challenged as confiscatory, and in the presence of some doubt of their adequacy, dismissal of the bill should not be absolute, but should be without prejudice to another suit, in case they should prove confiscatory when fully and fairly tested.

Final decree following 209 Fed. Rep. 99, modified and affirmed.

THE case is stated in the opinion.

Mr. Roger Montgomery, with whom *Mr. William P. Metcalf* was on the brief, for appellant.

Mr. James N. Flowers, *Mr. George H. Ethridge*, Assistant Attorney General of the State of Mississippi, *Mr. James Stone* and *Mr. J. B. Harris* for appellees, submitted.

MR. JUSTICE PITNEY delivered the opinion of the court.

Appellant filed his bill in the District Court against the members of the Mississippi Railroad Commission, an administrative body having the usual powers, in which he sought relief by injunction against an order prescribing maximum rates on logs in carload lots transported in intrastate commerce, upon a railroad operated by him; the ground of his complaint being that the rates were so low as to be confiscatory and therefore violative of the due process of law provision of the Fourteenth Amend-

ment. The court refused a preliminary injunction (209 Fed. Rep. 99), and, upon final hearing, dismissed the bill. The case is brought here by direct appeal because of the constitutional question, under § 238, Jud. Code.

The railroad in question is known as the Batesville Southwestern, and extends from a junction with the Illinois Central at Batesville for a distance of about 17 miles through a timber country, its entire line being within the State of Mississippi. It was built jointly by appellant and the Illinois Central Railroad Company, under a contract pursuant to which he disbursed approximately $146,000 and the company approximately $98,000. The contract was made in 1910, and by its terms Darnell was to maintain and operate the road for twenty years, the company to pay him for maintaining it $143 per mile per annum, and the road was to become the property of the company at the end of twenty years without further payment; the agreement, however, being subject to termination by the company prior to the expiration of the twenty years upon specified terms. The building of the road was commenced about June, 1911. Darnell began operating it as a common carrier in March, 1912, but its construction was not finally completed until about the middle of June, 1914.

The road is of standard gauge and construction, ballasted, and built in a first-class manner. Its traffic consists almost wholly of shipments of logs in carload lots from points along the line to the terminus at Batesville.

Pending the construction of the road, the Batesville Southwestern Railroad Company was organized as a corporation to take over the property, but the road remained in the hands of Darnell as lessee. In April, 1912, he established and promulgated a tariff providing a uniform rate for freight on logs in carload lots, with a minimum of 4,500 feet, regardless of the kind or character of the timber; which was, for 10 miles and under, $2.80 per thousand

feet; 10 to 15 miles, $3.35 per thousand; 15 to 20 miles, $3.90 per thousand. Complaint having been made to the Mississippi Railroad Commission, by citizens interested in the logging business, that these rates were extortionate, unjust, and confiscatory, a hearing was had, and, as a result, the commission, in July, 1913, made an order reducing the rates nearly 50 per cent. on oak, ash, and hickory, and more than 50 per cent. on other kinds of logs.

It appears that at the time of the construction of the railroad Darnell individually was the owner of a large amount (at the time of the hearing he owned 19,000 acres) of timber land in the country through which the road was projected, and that this furnished the reason for his interest in its construction and operation. At the same time he owned the principal part of the stock of R. J. Darnell, Incorporated, a lumber-milling corporation; but between that time and the time of the hearing the bulk of the stock had passed into the hands of his sons, he still remaining president of the company, and having sold to it the timber on the lands owned by him, the company agreeing to cut it, have it hauled, and loaded on the cars, and to pay him a fixed amount per stump.

The bill of complaint showed gross receipts from the operation of the railroad for the year ending June 30, 1913, amounting to $15,553.01, and operating expenses $4,296.20, leaving net earnings of $11,256.81. Against this, however, complainant charged as an annual rental $8,133.39, this being 1/20 of $162,667.69, then stated to be the amount invested by him in the construction of the road. Deducting this so-called rental charge left only $3,123.42, or less than 2 per cent. on the sum alleged to have been expended by complainant. These figures were the result of the rates established by him; and it was alleged that at the much lower rates established by the commission the road would yield no return above operating expenses.

The bill was filed in September, 1913, the commission's rates not having as yet been put into effect. At the preliminary hearing the District Court held (209 Fed. Rep. 99) that upon the showing then made it would not interfere with the commission's rates at least until final hearing, thus affording a period for experiment as to whether new business would be developed in volume sufficient to make those rates remunerative.

Upon the final hearing, evidence having been submitted by both sides, the court's decree was to the effect that the rates established by the commission were reasonable and should be enforced.

In this court appellant insists, first, that the District Court erred in holding that he was not entitled to charge against the annual operating revenue 1/20 of the amount expended by him in the construction of the road. We are clear that this contention is untenable. In determining whether rates are confiscatory because not yielding a proper return, the basis of calculation is the fair value of the property used in the service of the public. *Smyth* v. *Ames*, 169 U. S. 466, 546; *Minnesota Rate Cases*, 230 U. S. 352, 434. The hypothetical annual payments of 1/20 of the cost of the road to Darnell were not a proper rent charge, and bore no relation to the actual value of the property. They arose out of the contractual arrangement between Darnell and the Illinois Central, and were in the nature of an amortization charge to take account of his diminishing interest in the road. But, upon that theory, the interest of the Illinois Central increased in value by as much as that of Darnell decreased. In any aspect, the transference of his interest to the Illinois Central, and any charge on that account, made by him for purposes of his own bookkeeping, had no proper relation to the question of the value of the property, and hence were of no concern to the public.

It is insisted that upon the proofs, and especially by

actual experiment, the rates established by the commission were shown to be confiscatory.

It is well established that in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing. Besides this, there was affirmative evidence before the District Court to the effect that the rates were reasonable. The evidence for complainant, tending to show they were non-remunerative, while based upon actual experience in the operation of the road, yet relates to only a brief period when conditions were abnormal. The road was a new one, not completed until June, 1914, that is, after the filing of the bill and shortly before the final hearing. The commission's rates, although promulgated in June, 1913, were not put into effect until September 10, and the period of experimentation to which the evidence related extended only from the date last mentioned to March 31, 1914. Practically the entire business of the road, at first, was hauling logs from complainant's land to a mill operated by R. J. Darnell, Incorporated, at Memphis. That mill was destroyed by fire in June, 1913, and thereafter the corporation constructed a mill at Batesville, but this was not placed in operation until March 17, 1914. In consequence there was a heavy falling off in traffic on the road, there being no Darnell shipments except such logs as were on hand when the Memphis mill was burned.

The evidence throws doubt upon the question whether the road, if built merely for the purpose of serving the timber country that is tributary to its present line, was not an extravagant venture. But, as yet, there has been no serious effort to develop traffic even from that country, aside from complainant's own properties. If the road was built rather as a branch of the Illinois Central, and with a view to extending it into a more lucrative territory, any extra cost of construction attributable to this is

hardly to be accounted as a part of the fair value devoted to the use of the timber traffic. The circumstance that a road may have been unwisely built, in a locality where there is not sufficient business to sustain it, may be taken into account. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 412. And the nature and value of the service rendered by the company to the public are matters to be considered. *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578, 597; *Smyth* v. *Ames*, 169 U. S. 466, 544.

In the case before us, if the earning capacity of the railroad, present and prospective, really is as small as appellant claims, it may be doubted whether the road is worth what it cost. But it is sufficient for the present to say that the experimental period was too brief; there is too little showing of an effort to develop traffic along the line of the road from property other than that of complainant; and conditions during the entire period covered by the testimony have been too abnormal to enable us to say that the commission's rates are confiscatory.

The decree under review should be so modified that the dismissal of the bill shall be without prejudice to another suit to restrain the enforcement of the commission's rates, if after a full and fair test they shall be found to be confiscatory (*Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 19; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 55), and, as so modified, it should be affirmed.

Modified and affirmed.